
COMMISSION DECISION
IN THE MATTER OF
ZONING PETITION ZP 707

Staff Recommendation
September 9, 2009

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GOVERNOR

STATE OF MAINE
DEPARTMENT OF CONSERVATION
MAINE LAND USE REGULATION COMMISSION
22 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0022



PATRICK K. MCGOWAN
COMMISSIONER

**COMMISSION DECISION
IN THE MATTER OF**

STAFF RECOMMENDATION	
Accepted	_____
Accepted As Amended	_____
Reversed And Rewritten	_____
Tabled	_____
Public Hearing	_____

Concept Plan For The Moosehead Lake Region
For Certain Lands Under The Ownership Of
Plum Creek Maine Timberlands, L.L.C. And Plum Creek Land Company,
Piscataquis And Somerset Counties

Findings of Fact and Decision

ZONING PETITION ZP 707

The Maine Land Use Regulation Commission, at a meeting of the Commission held September 23, 2009, at Bangor, Maine, after reviewing the petition and supporting documents submitted by Plum Creek Maine Timberlands, L.L.C. and Plum Creek Land Company for Zoning Petition ZP 707, public comments, Intervenor and Interested Persons comments, governmental review agency comments and other related materials on file, pursuant to 12 M.R.S.A. Section 681 et seq. and the Commission's Standards and Rules, finds the following facts:

1. PETITIONER

Plum Creek Maine Timberlands, L.L.C., and Plum Creek Land Company (“Plum Creek”)¹
999 Third Avenue Suite 2300
Seattle, Washington 98104

¹ The co-applicants, Plum Creek Maine Timberlands, L.L.C. (formerly known as SDW Timber II, L.L.C.) and Plum Creek Land Company are subsidiaries of Plum Creek Timber Company, Inc. Plum Creek has filed on record (i) complete signed copies of all relevant deeds and title insurance commitments, (ii) legal opinions from its Maine legal counsel that Plum Creek has demonstrated sufficient title, right or interest in all of the property that is proposed for development or use, and (iii) current lease agreements for all leased lots within the Plan Area. Pursuant to Ch. 4.03 of the Commission’s rules, the Commission finds that these materials demonstrate to its satisfaction sufficient title, right or interest in all of the property proposed for rezoning.

2. PROPOSAL

Plum Creek seeks a change in subdistrict boundaries from its present Management, Development and Protection Subdistrict designations to a Resource Plan Protection (P-RP) Subdistrict² and approval of the attendant *Concept Plan for the Moosehead Lake Region* (hereinafter, “Concept Plan”),³ attached hereto as Attachment B.

3. PRESENT ZONING WITHIN THE PLAN AREA

- General Management (M-GN) Subdistrict
- Commercial and Industrial Development (D-CI) Subdistrict
- General Development (D-GN) Subdistrict
- Residential Development (D-RS) Subdistrict
- Aquifer Protection (P-AR) Subdistrict
- Flood Prone Protection (P-FP) Subdistrict
- Fish and Wildlife Protection (P-FW) Subdistrict
- Great Pond Protection (P-GP) Subdistrict
- Mountain Area Protection (P-MA) Subdistrict
- Recreation Protection (P-RR) Subdistrict
- Soil and Geology Protection (P-SG) Subdistrict
- Shoreland Protection (P-SL) Subdistrict
- Unusual Area Protection (P-UA) Subdistrict
- Wetland Protection (P-WL) Subdistrict

4. PROPOSED ZONING FOR THE PLAN AREA

Resource Plan Protection (P-RP) Subdistrict

² The land comprising the P-RP Subdistrict is hereinafter collectively referred to as the “Plan Area.” The Plan Area is generally shown on Attachment A, and is more specifically identified as the P-RP Subdistrict on the Official Land Use Guidance Maps contained in Appendix A of Attachment B.

³ The Commission established concept plans on June 7, 1990 to encourage long-range planning as an alternative to haphazard, incremental development through the adoption of amendments to its 1983 Comprehensive Land Use Plan, which set forth the policy objectives of concept planning and their basic requirements, and through the adoption of amendments to its rules and regulations (Ch. 10), which set forth the criteria for approval specific to concept plans and other provisions to provide for implementation of concept plans. Pursuant to 12 M.R.S.A. § 685-C, the Comprehensive Land Use Plan amendments were submitted to Governor John R. McKernan, Jr., who granted his approval on June 15, 1990. Pursuant to 12 M.R.S.A. § 685-A(8)(B)(6) (1990) (now codified as 12 M.R.S.A. § 685-A(7)(B)(6)), the Ch. 10 amendments became effective immediately, but upon adoption were submitted to the Legislature on December 13, 1990 for approval or modification. Because the Legislature did not act, the amendments remained in full force and effect. (*Id.*) Further explanation of concept planning, generally, and as it applies to Zoning Petition ZP 707 is found in Attachment B (*see* Concept Plan, Sep. 23, 2009, Sec. I).

5. SIZE OF PARCEL TO BE REZONED

380,074 acres (owned)

6. LOCATION OF PROPOSAL

The Plan Area is comprised of Plum Creek's ownership within the following twenty-six minor civil divisions in Somerset and Piscataquis Counties, which more or less surround Moosehead Lake:

- Beaver Cove, Piscataquis County
- Big Moose Township, Piscataquis County
- Big W Township, NBKP, Somerset County
- Bowdoin College Grant West, Piscataquis County
- Brassua Township, Somerset County
- Chase Stream Township, Somerset County
- Days Academy Grant, Piscataquis County
- Elliotsville Township, Piscataquis County
- Frenchtown Township, Piscataquis County
- Indian Stream Township, Somerset County
- Lily Bay Township, Piscataquis County
- Long Pond Township, Somerset County
- Misery Gore, Somerset County
- Misery Township, Somerset County
- Rockwood Strip Township T1 R1 NBKP, Somerset County
- Rockwood Strip Township T2 R1 NBKP, Somerset County
- Sandbar Tract Township, Somerset County
- Sandwich Academy Grant Township, Somerset County
- Sapling Township, Somerset County
- Soldiertown Township, Somerset County
- Spencer Bay Township, Piscataquis County
- Squaretown Township, Somerset County
- T1 R13 WELS, Piscataquis County
- Taunton & Raynham Academy Grant Township, Somerset County
- Thorndike Township, Somerset County
- West Middlesex Canal Grant Township, Somerset County

7. ADMINISTRATIVE HISTORY

In the Commission's experience, Plum Creek's proposal for Concept Plan rezoning was unprecedented in its scale and complexity, and in the level of interest in and attention to the proposal by members of the public, organized interest groups, and governmental review agencies. The administrative process undertaken to review the proposal by the Commission and, under its direction, by LURC staff and consultants,⁴ extended for over four years and reflects the scale and complexity of the proposal and the public interest in it. In 2003, Plum Creek initiated informal discussions with Commission staff of its ideas for a concept plan for its ownership within the Moosehead Lake region. In April 2005, Plum Creek filed its original Zoning Petition ZP 707 and formally amended its petition in April 2006, April 2007, and October 2007.

In December 2007 and January 2008, the Commission held four full weeks of adjudicatory hearings on Zoning Petition ZP 707, in which twenty-six formal parties (Plum Creek, plus sixteen Intervenors and nine Interested Persons) and eighteen State and Federal governmental review agencies were provided the opportunity to participate. The parties collectively presented 170 witnesses, each of whom was made available for cross examination by all of the parties.⁵ During this same time period, the Commission also held four full days of public hearings on Zoning Petition ZP 707 (two days in Greenville, one day in Augusta, and one day in Portland), during which hundreds of members of the public testified before the Commission.

In early 2008, following these adjudicatory and public hearings, the Commission determined that Plum Creek's October 2007 Zoning Petition did not satisfy all of the regulatory requirements for concept plan approval, and issued a directive to its staff and consultants to generate a comprehensive set of amendments to Plum Creek's proposal for the Commission's consideration. As part of this process, the Commission solicited and considered many rounds of written public, party and governmental review agency comments regarding what, if any, amendments to Plum Creek's proposal were necessary in order to satisfy governing review criteria.

In June 2009, following a lengthy multi-step process, the Commission finalized the specific text of amendments that the Commission found to be required by statute and its regulations. Each of the parties with implementing responsibilities under the Concept Plan ("implementing parties") informed the Commission that they were prepared to accept the responsibilities set forth in the amendments. Additionally, Plum Creek notified the Commission in writing that it considered the Commission-amended Concept Plan to be its own landowner-initiated Concept Plan.

Finally, today the Commission formally approves the Concept Plan set forth in Attachment B, and adopts the associated P-RP Subdistrict identified on the Official Land Use Guidance Maps contained in Appendix A of Attachment B.

The full administrative history of this proceeding is presented in detail immediately below.

⁴ In 2005, LURC retained consultants Ronald Kreisman and Evan Richert (hereinafter, "consultants") to assist the Commission and its staff in processing Zoning Petition ZP 707.

⁵ In the course of the hearings, several witnesses were excused from their obligation to appear for cross examination by stipulation of all parties.

A. April 2005 – March 2006: Filing And Processing Of Original Zoning Petition

- (1) In the Fall of 2003, Plum Creek first approached Commission staff to discuss its interest in developing a concept plan for its ownership in the Moosehead Lake region. Through the Spring of 2005, Commission staff held several informal pre-application meetings with Plum Creek in which it sought and received preliminary and general information from staff on the Commission's concept planning requirements, including relevant criteria for approval, public notice requirements, and necessary application materials.
- (2) On April 5, 2005, Plum Creek submitted Zoning Petition ZP 707 to the Commission to rezone approximately 400,000 acres of its ownership in the Moosehead Lake region to a P-RP Subdistrict in order to implement a thirty-year concept plan.⁶ Public notice of the petition was posted pursuant to Ch. 4.05(4) of the Commission's rules, and application materials were delivered to governmental review agencies of appropriate jurisdiction for review and potential comment. Commission staff also specifically informed interested parties of the receipt of the petition by memorandum.⁷
- (3) Plum Creek's April 2005 Zoning Petition included, *inter alia*, the following proposed development, conservation and additional plan elements:
 - (a) Proposed Development Elements
 - (i) Up to 975 residential lots, including 575 shorefront lots, located on the shores of eighteen water bodies – the Moose River, the East and West Outlets of the Kennebec River, the west shore of Moosehead Lake stretching from the southwest portion near Harford's Point Township northward to and including Big W Township, the east shore of Moosehead Lake in Lily Bay Township, the north and south shores of Brassua Lake, the north and south shores of Long Pond, the southeast shore of Indian Pond, the shores of Prong Pond, the shores of Upper Wilson Pond, the shores of Burnham Pond, and the shores of eight outlying small ponds in the northwest and southwest corners of the Plan Area as well as within the Roaches Ponds Tract (Fish, Ellis, Luther, Center, Knights, Second Roach, Third Roach and Penobscot Ponds).

⁶ Additional application materials and responses to information requests from staff and consultants and governmental review agencies were submitted to LURC by Plum Creek intermittently from April to December 2005, including on April 19, 2005 (correction of application to reflect proposal as a concept plan rather than a resource plan); May 24, 2005 (information regarding restrictive zoning and long-term conservation); August 5, 2005 (information regarding notice of filing and notification report listing the names of publications that published the notice of filing and persons who received the notice by certified mail, and application certification); August 9, 2005 (report of estimated economic impacts of implementing the proposed concept plan, and preliminary phosphorus evaluation for select watersheds); September 2, 2005 (information regarding the Forest Society of Maine's interest in being considered holder of conservation easements and summarizing its qualifications pursuant to the Commission's *Guidelines for the Selection of Conservation Easement Holders*); and December 29, 2005 (Exhibit G: conformance with easement holder guidelines, and letters to officials requesting evaluation of impacts and services).

⁷ In order to provide maximum opportunity for public scrutiny of Plum Creek's proposed Concept Plan during the course of its review, the Commission regularly posted application materials and procedural updates on its web site and maintained a mailing list of persons interested in receiving postal or e-mail notices about major amendments to Zoning Petition ZP 707, upcoming meetings and hearings, and important deadlines related to the Commission's review. The mailing list, which was first assembled in the Spring of 2005, consisted of more than 2,000 persons as of the Fall of 2009.

- (ii) An approximately 3,000-acre nature-based tourist facility in Lily Bay Township on Moosehead Lake and an approximately 500-acre area for a lodge facility on the southern peninsula of Brassua Lake. Zoning would have allowed commercial recreational and nature-based tourism facilities, as well as unlimited numbers of residential dwelling units and subdivision lots.
- (iii) A 1,000-acre area for large scale commercial and industrial development.
- (iv) Up to three commercial sites, totaling 600 acres, for campgrounds, storage facilities, and/or a small store.

(b) Proposed Conservation Elements

- (i) Permanent 500-foot wide conservation easements prohibiting residential development along Plum Creek's ownership on the shores of 70 water bodies (approximately 180 miles and 11,000 acres of shoreland) proposed to be incrementally granted to a qualified conservation easement holder upon subsequent approvals of subdivision permit applications in the Plan Area, with no conservation proposed to be granted immediately upon Concept Plan approval.

(c) Proposed Additional Plan Elements

- (i) A grant of permanent easements over approximately 70 miles of Interconnected Trail Systems ("ITS") snowmobile trail to the State of Maine upon approval of the Concept Plan.
- (ii) A grant of permanent easements over approximately 55 miles of new "peak-to-peak" hiking trail to the State of Maine upon approval of the Concept Plan.
- (iii) Proposed zoning to reserve approximately 382,000 acres of non-shorefront timberland for forest management and restrict residential development for the thirty-year term of the Concept Plan, with 80 acres set aside for up to four new commercial sporting camps and/or remote recreational cabin sites.
- (iv) A 7-year window of opportunity for the negotiation of a fee transfer of selected conservation lands in the Roaches Ponds Tract to the State of Maine in lieu of development proposed on the shorelines of Second Roach, Third Roach and Penobscot Ponds.
- (v) A donation of up to 100 acres to eligible non-profit organizations for the provision of affordable housing in the region.

- (4) Anticipating the submittal by Plum Creek of a concept plan proposal for its ownership in the Moosehead Lake region, on March 18, 2005, a petition signed by fourteen Maine citizens was filed with the Commission, pursuant to 12 M.R.S.A. § 685-B(10), seeking to initiate rulemaking to establish a 180-day moratorium on the processing of certain rezoning petitions and/or permit applications within 41 minor civil divisions surrounding Moosehead Lake. The petition generally argued that existing comprehensive land use plans, land use or zoning regulations or other applicable laws are inadequate to prevent serious public harm.⁸ The terms of the petition sought a moratorium on all amendments of land use district boundaries that would allow for commercial, industrial or residential development, as well as all permits for developments or subdivisions into five or more lots. The petition also sought the Commission to undertake a “regional planning process which formulates a coherent future vision and adopts enforceable rules to implement that vision for the affected geographic area.”
- (5) On April 8, 2005, the Commission received a letter from the fourteen Maine citizen petitioners stating that the scope of the moratorium they sought in their March 18, 2005 petition was intended to include concept plans. On April 25, 2005, the Commission received a petition signed by 84 Maine citizens opposing the moratorium. The Commission also received four additional public comments on the petition, three opposed and one in support.
- (6) In a staff memorandum to the Commission dated April 26, 2005, Commission staff noted that the Commission’s 1997 Comprehensive Land Use Plan (“CLUP”) identifies the Moosehead Lake region as one of several areas within the Commission’s jurisdiction with special planning needs in light of the region’s high-value natural resources and the potential threats to those resources from high rates of growth. The memorandum noted that Ch. 10.23,H,10 of the Commission’s rules requires concept plans to conform with the CLUP, and indicated that Plum Creek’s proposed Concept Plan would therefore need to conform with the CLUP’s designation of the Moosehead Lake region as one with special planning needs. The memorandum concluded by committing to seek and consider public comment on whether or not Plum Creek’s proposal conforms with this CLUP provision during the review process.
- (7) On May 4, 2005, the Commission denied the petition for a moratorium, specifically finding that its statute, CLUP and regulations are adequate to prevent serious public harm from the types of development that would be affected by the proposed moratorium. The Commission’s vote on the motion to deny the petition was six in favor and none opposed, with one member abstaining. The Commission’s decision to deny the petition for a moratorium was not appealed.

⁸ See 12 M.R.S.A. § 685-B(10)(A)(2).

- (8) In light of significant public interest in Plum Creek’s proposal, Commission staff and consultants hosted four “issues scoping sessions” in August 2005 wherein members of the public were invited to present their views on the range of issues that Plum Creek’s 2005 proposal raised that LURC should consider as part of its review of Zoning Petition ZP 707. Commissioners were not present at these scoping sessions. The scoping sessions were held in Greenville on August 16, 2005; in Rockwood Strip Township on August 18, 2005; in Moose River on August 22, 2005; and in Hallowell on August 24, 2005. Nearly 1,000 persons attended the sessions, with approximately 150 individuals making oral presentations to the Commission’s staff. Hundreds of written comments were sent to LURC.
- (9) On October 31, 2005, Commission staff and consultants released a nineteen-page document summarizing the written and oral comments received from the public. In general, members of the public presented a wide range of support for and opposition to Plum Creek’s proposal. Many expressed a desire for the Moosehead Lake region to remain unchanged. Many stated that some development in the Moosehead Lake region was needed in order to create jobs and support a sustainable economy. Likewise, members of the public expressed concerns over how, when and where development could occur while maintaining and protecting the region’s unique character, sense of remoteness, traditional uses, and natural resources. A wide variety of specific issues were raised orally and in writing, including: (i) the economic impacts of Plum Creek’s proposal, (ii) the need for natural resources protections, (iii) the preservation of natural character and traditional uses, (iv) the need to address traffic and other infrastructure impacts, (v) the effects of Plum Creek’s proposal on public access, (vi) the location, type and amount of development and conservation proposed and necessary, and (vii) the precedent-setting nature of Plum Creek’s proposal.⁹
- (10) In order to further scope out the issues presented by Plum Creek’s proposal, Commission staff and consultants met with various individuals and representatives of local and regional organizations, as well as governmental review agencies in the Fall and Winter of 2005. For example, Commission staff and consultants met with the Piscataquis County Economic Development Council, Somerset Economic Development Council, and the Town of Greenville on November 17, 2005; the Moosehead Region Futures Committee on November 17, 2005; certain state governmental agency representatives on November 22, 2005; and The Nature Conservancy on February 1, 2006.

⁹ See LURC: Staff and Consultants, Oct. 31, 2005, Summary of Issues Related to the Plum Creek Concept Plan Proposal for the Moosehead Lake Region Presented to the Land Use Regulation Commission at the August 2005 Scoping Sessions and in Follow-up Written Submittals.

B. April 2006 – March 2007: Filing And Processing Of First Major Amendment To Zoning Petition ZP 707

- (1) On April 27, 2006, Plum Creek submitted an amended Zoning Petition ZP 707 to the Commission. This amended petition superseded the April 2005 Zoning Petition.¹⁰ Public notice of the amended petition was provided pursuant to Ch. 4.05(4) of the Commission's rules, and application materials were delivered to governmental review agencies of appropriate jurisdiction for review and potential comment. Commission staff also specifically notified interested parties of its receipt of the amendment by memorandum.
- (2) Plum Creek's April 2006 Zoning Petition included, *inter alia*, the following proposed changes to the development, conservation, and additional plan elements,¹¹ as compared to the April 2005 Zoning Petition:
 - (a) Proposed Development Elements
 - (i) Of the 975 proposed residential lots, shorefront lots were reduced from 575 to 480. Proposed residential development was eliminated from the shores of nine water bodies – the Moose River and the eight outlying ponds in the northwest and southwest corners of the Plan Area and within the Roaches Ponds Tract (Fish, Ellis, Luther, Center, Knights, Second Roach, Third Roach and Penobscot Ponds). Residential development was also removed from the easternmost portion of the north shore of Long Pond.
 - (ii) The proposed 500-acre area for a lodge facility on the southern peninsula of Brassua Lake was eliminated. An approximately 2,600-acre nature-based resort was added on the slopes of Big Moose Mountain. The total number of overnight accommodation units within the Lily Bay resort area

¹⁰ Additional application materials and responses to information requests from staff and consultants and governmental review agencies were submitted to LURC by Plum Creek intermittently from May 2006 through January 2007, including on May 4, 2006 (Exhibit B: right, title and interest); May 10, 2006 (revised concept plan summary map); May 30, 2006 (response to public comments regarding the Conservation Framework); June 29, 2006 (Appendix P: legal standards, and Appendix R: erosion control plan); July 31, 2006 (information regarding proposed resort, proposed new and upgraded roads, and existing and proposed utility lines); August 18, 2006 (affordable housing details, Appendix B: infrastructure and community impact analysis, form of ski trail easement, and form of conservation easements); October 6, 2006 (road and utility line maps, rationale for deviations from LURC model easement, resort envelope legal authority, and list of Plum Creek contractors); October 12, 2006 (information regarding wellhead protection for resort areas); October 18, 2006 (Moosehead Lake build-out map); October 20, 2006 (information regarding affordable housing, flexibility/LURC commitments, residential and resort area development unit caps, wetlands delineations and subdivision roads); October 24, 2006 (work plan for a photolinear evaluation and bedrock mapping at resort areas); October 25, 2006 (memorandum of agreement between Plum Creek and The Nature Conservancy regarding the Conservation Framework); November 3, 2006 (maps identifying areas where separation zones overlap proposed development areas); November 6, 2006 (cover type maps); November 14, 2006 (composite of revised detail maps); November 21, 2006 (purchase and sale agreement between Plum Creek and The Nature Conservancy regarding the Conservation Framework); December 1, 2006 (conservation easement comparison, LURC commitments clarification, homeowner land use compliance, and map of sporting camps); December 8, 2006 (photolinear evaluation and bedrock mapping report); December 11, 2006 (justification of waiver of Ch. 10.25,Q,3 of the Commission's rules); December 21, 2006 (natural resources evaluations of proposed development and conservation lands); and January 12, 2007 (information regarding the legal relevance of the Conservation Framework).

¹¹ Petition, Apr. 26, 2006, Petition for Rezoning and Plan Description.

was restricted to 250 units for the thirty-year term of the Concept Plan. The total number of resort accommodation units at the newly proposed Big Moose Mountain resort area was estimated at, but not restricted to, 500 units.

- (iii) The 1,000-acre area for large-scale commercial or industrial development was reduced to the 90-acre already zoned for such development as a D-CI Subdistrict.
- (iv) Campgrounds and remote cabins were eliminated as permitted uses under the terms of the Concept Plan.
- (v) So-called “thirty-year no development buffers,” encompassing approximately 25,000 acres of land not covered by easements, options or development envelopes within the Plan Area, were proposed to remain undeveloped for the term of the Concept Plan in order to “afford flexibility for future needs of the area.”¹²

(b) Proposed Conservation Elements

- (i) The incremental execution of those portions of the 11,000-acre permanent 500-foot wide conservation easements located on water bodies not proposed for development was eliminated and instead these conservation easements were proposed to be granted upon Concept Plan approval. However, the incremental execution of those portions of these conservation easements located on the lakes and ponds proposed for development (Moosehead and Brassua Lakes, and Long, Burnham, Pond, Indian and Upper Wilson Ponds) continued to be tied to subsequent approvals of subdivision permit applications in the Plan Area.
- (ii) A permanent 500-foot wide “no development” conservation easement along a stretch of the Moose River previously proposed for development (approximately 10 miles and 623 acres of shoreland) was added and proposed to be granted upon approval of all shorefront subdivisions on Brassua Lake.
- (iii) A permanent conservation easement (“Moosehead-Roach River Conservation Easement”) was added. Covering approximately 61,000 acres, the conservation easement was located to the east of Moosehead Lake and included the backlands of Days Academy Grant Township, the backlands of Spencer Bay, the backlands north of the Roach River and the backlands surrounding First Roach Pond. The conservation easement was proposed to be granted upon Concept Plan approval.

¹² Petition, Apr. 26, 2006, Plan Description, p. I-5.

- (iv) An agreement (“Conservation Framework”) between Plum Creek and The Nature Conservancy (“TNC”) was introduced, whereby TNC would have a five-year option, contingent on the Commission’s approval of the proposed Concept Plan, to purchase a 266,000-acre permanent conservation easement (“Moosehead Legacy Conservation Easement”) and to purchase in fee approximately 74,500 acres (29,500 acres within the Roaches Ponds Tract and 45,000 acres within the Number 5 Bog area) to be held for conservation purposes.

- (c) Proposed Additional Plan Elements
 - (i) A grant of permanent easements over twelve miles of the “Mahoosucs-to-Moosehead” hut-to-hut trail system to the Western Mountains Foundation (now Maine Huts and Trails) was added.

 - (ii) A community fund was proposed, whereby up to 1 percent of the sale price of residential lots would be used to “support initiatives that enhance educational needs and recreational amenities.”¹³

- (3) In order to further scope out the issues presented by Plum Creek’s proposal, Commission staff and consultants continued to meet with various stakeholders and representatives of local and regional organizations, as well as governmental review agencies throughout the Summer and Fall of 2006.¹⁴

- (4) On November 28, 2006, Commission staff found Plum Creek’s amended petition “acceptable for processing,” meaning that the staff had sufficient information to understand the proposal and to begin the formal regulatory review.

- (5) On January 3, 2007, the Commission authorized the scheduling of a public hearing (with final dates and locations to be determined and posted later) and the establishment of a February 14, 2007 deadline for the submittal of petitions to intervene with the Commission by any persons interested in seeking Intervenor status in Zoning Petition ZP 707. Pursuant to the applicable provisions of the Maine Administrative Procedures Act (5 M.R.S.A. Ch. 375) and Ch. 5 of the Commission’s rules, a public hearing notice containing these authorizations was published on January 17, 2007.

¹³ Petition, Apr. 27, 2006, Plan Description, p. I-2.

¹⁴ For example, Commission staff and consultants met with the Moosehead Region Futures Committee on August 30, 2006; State and/or Federal governmental review agencies on May 30, June 28 and July 10, 2006; and the Maine Wilderness Guides Organization on November 28, 2006.

C. **April 2007 – July 2007: Filing And Processing Of Second Major Amendment To Zoning Petition ZP 707**

- (1) On April 27, 2007, Plum Creek submitted a second amended Zoning Petition ZP 707 to the Commission. This second amended petition superseded the April 2006 Zoning Petition.¹⁵ Commission staff again notified all interested parties of its receipt of the amendment, and provided interested parties with a memorandum summarizing how to obtain copies of the revised petition, the Commission's review process and tentative pre-hearing schedule, and how to submit public comments on the second amended petition.
- (2) The April 2007 Zoning Petition included, *inter alia*, the following proposed changes to the development, conservation and additional plan elements,¹⁶ as compared to the April 2006 Zoning Petition:

¹⁵ Additional application materials and responses to information requests from staff and consultants and governmental review agencies were submitted to LURC by Plum Creek intermittently from May through September 2007, including on May 11, 2007 (information regarding the amended petition); May 14, 2007 (information regarding the Forest Society of Maine's continued interest in being considered holder of conservation easements and summarizing its qualifications pursuant to the Commission's Guidelines for the Selection of Easement Holders); May 25, 2007 (proposed visibility standards for back-lots); May 31, 2007 (fully executed copy of Conservation Framework purchase and sale agreement amendment, estimated economic impacts from proposed development report, market assessment of land and resort development report, and information regarding the Western Maine Foundation's and the Bureau of Parks and Lands' willingness to serve as holder or third-party holder of certain easements); June 1, 2007 (revised figures depicting approximate survey route for 2006 ecological evaluations, methodology and results of 2006 ecological evaluations, anticipated methodology for 2007 ecological evaluations, and corrected estimated fiscal impacts from proposed development report); June 8, 2007 (Maine Department of Transportation traffic movement permit application, revised soils evaluation report; amended erosion and sedimentation control plan for roadway construction, and map illustrating access to development zones); June 13, 2007 (recreational resources impacts report); June 15, 2007 (updated legal opinion regarding Exhibit B, draft archaeological phase 0 study, interim archaeological phase 1 survey of proposed development on Long Pond, vegetation clearing demonstration site analysis, letter in support of Plum Creek's proposed visibility standards for back-lots, and response to the State Planning Office's inquiry regarding solid waste issues); June 18, 2007 (cover type maps for development areas); June 19, 2007 (archaeological phase 0 study, and draft archaeological phase 1 survey of proposed development on Long Pond); June 22, 2007 (legend to cover type maps and stand classes); July 10, 2007 (revised letter from Waste Management Disposal Services); July 16, 2007 (Town of Greenville property tax maps, suitability of site locations for the Big Moose Mountain and Lily Bay resort areas, rapid assessment of conservation priorities, and comparisons of the Moosehead Legacy and Balance conservation easements); July 18, 2007 (information pertaining to traffic volumes); July 19, 2007 (final archaeological phase 1 survey of proposed development on Long Pond, and information pertaining to archaeological resources); July 23, 2007 (information pertaining to land use zones and standards and traffic volumes, expanded natural resources evaluations of additional development areas and conservation easement areas, photolinear evaluation and bedrock mapping for the Big Moose Mountain and Lily Bay resort areas, soils mapping and evaluation, amended erosion and sedimentation control plan, and basis for access roadway design); July 24, 2007 (relevant portions of field surveys); July 30, 2007 (information pertaining to proposed land use zones and standards); August 7, 2007 (Figure 12 of natural resource evaluation of proposed conservation easement areas); August 13, 2007 (amended concept plan architecture, revised Moosehead Legacy and Balance conservation easements); August 14, 2007 (amended concept plan architecture, and soils suitability maps with revised road conditions); August 16, 2007 (corrections to certain definitions and the resort development zone); August 22, 2007 (corrected and redlined copies of the revised Moosehead Legacy and Balance Conservation Easements); August 23, 2007 (responses to information request from DEP regarding solid waste); August 24, 2007 (revised estimated fiscal impacts from development report); August 31, 2007 (information regarding the Somerset Game Sanctuary); and September 24, 2007 (draft copy of end of field survey of archaeological phase 1 survey of the southeast shore of Long Pond).

¹⁶ Petition, Apr. 27, 2007, Petition for Rezoning and Plan Description.

(a) Proposed Development Elements

- (i) Of the 975 proposed residential lots, shorefront lots were reduced from 480 to approximately 250. Proposed residential development was eliminated from the shores of Prong Pond and the East Outlet of the Kennebec River. Residential development was also eliminated from the shores of Moosehead Lake in Big W Township and at Carleton Point on the Lily Bay peninsula, the north peninsula of Brassua Lake, a portion of the northeast shore of Long Pond, portions of the southeast shore of Indian Pond, and the east shore of Upper Wilson Pond. Residential development was added to the southwest shore of Long Pond.
- (ii) The total number of overnight accommodation units within the Big Moose Mountain resorts was restricted to 800 units for the thirty-year term of the Concept Plan.
- (iii) The thirty-year no development buffers were eliminated and replaced with larger development areas, which abandoned the precision of the site-specific development “envelopes” of prior proposals.

(b) Proposed Conservation Elements

- (i) The permanent 500-foot wide conservation easements along the shores of undeveloped water bodies, water bodies proposed for development, and a stretch of the Moose River, as well as the Moosehead-Roach River Conservation Easement, were replaced with a permanent conservation easement (“Balance Conservation Easement”) covering approximately 90,000 acres.

On the east side of Moosehead Lake, the Balance Conservation Easement extended from the east shore of Spencer Bay southward to the Town of Beaver Cove and eastward to roughly the Lily Bay Township - Frenchtown Township boundary. On the west side of Moosehead Lake, the conservation easement encompassed all shorelines and heights of land not proposed for development surrounding Long Pond, Brassua Lake, Indian Pond, Burnham Pond, the East and West Outlets of the Kennebec River, Little Indian Pond, Knights Pond, Scribner Pond, and the slopes of Big Moose Mountain. The conservation easement also included the shores of all undeveloped water bodies within the Plan Area.

The Balance Conservation Easement was proposed to be granted upon Concept Plan approval, thereby eliminating all previously proposed incremental executions of conservation easements.

- (ii) The Conservation Framework was modified to encompass all lands within the Plan Area that were not proposed for development or inclusion in the Balance Conservation Easement.

(c) Proposed Additional Plan Elements

No substantial changes were made to the additional plan elements of the Concept Plan proposal.

- (3) On May 18, 2007, Commission staff conditionally accepted for processing the second amended petition. The staff informed Plum Creek that the conditions associated with the staff's acceptance for processing of the amended petition had been met upon Plum Creek's submittal of certain documents on May 31, 2007.
- (4) On September 5, 2007, the Commission accepted a staff recommendation to hold public hearings in the matter of Zoning Petition ZP 707 starting on November 4, 2007. However, on October 10, 2007, staff informed the Commission that Plum Creek had notified LURC that it intended to file additional amendments to its petition. Consequently, the Commission voted to rescind its September 5, 2007 decision regarding the public hearing schedule and directed its staff to recommend a revised hearing schedule.

D. August 2007 – November 2007: Pre-Hearing Process

- (1) The Commission received 32 petitions for formal Intervenor status in Zoning Petition ZP 707. At its July 11, 2007 meeting the Commission conditionally granted all 32 petitions, and delegated to its Chair the authority to determine the status of each party as either an Interested Person or an Intervenor, and to what extent, if at all, the parties should be consolidated into groupings to facilitate conduct of the hearings.
- (2) The Chair held the first pre-hearing conference on July 13, 2007, which was attended by Plum Creek and representatives of all 32 parties. The conference was a comprehensive discussion of procedural issues ranging from rules for contacting Commission staff and consultants and electronic service of parties, to expectations regarding prefiled testimony and how certain threshold evidentiary issues would be argued and ruled upon. The Chair also circulated proposed consolidated groupings of parties and a memorandum prepared by Commission staff and consultants setting forth applicable regulatory review criteria and identifying potential issues for the hearings. The Chair provided all parties a written opportunity to comment on the proposed consolidated groupings of parties.
- (3) On August 10, 2007, having considered comments and objections¹⁷ from the parties, the Chair issued his First Procedural Order, which addressed all pending procedural issues, and which consolidated the 32 parties originally seeking Intervenor status into groups of sixteen formal Intervenors and nine formal Interested Persons, as follows:¹⁸
 - (a) Intervenors
 - Alliance of Trail Vehicles of Maine, Maine Bowhunters Association, Maine Professional Guides Association, and Maine Snowmobile Association (“ATVM”)
 - Appalachian Mountain Club (“AMC”)
 - Coalition to Preserve and Grow Northern Maine (“COALITION”)
 - Forest Ecology Network and RESTORE: The North Woods (“FEN-RESTORE”)
 - GrowSmart Maine (“GROWSMART”)
 - Maine Audubon and Natural Resources Council of Maine (“MA-NRCM”)
 - Maine Mills, Maine Woods Coalition, and Professional Logging Contractors of Maine (“MILLS”)
 - Maine State Chamber of Commerce (“MSCC”)
 - Maine Wilderness Guides Organization (“MWGO”)
 - Moosehead Region Futures Committee (“MRFC”)
 - Native Forest Network – Gulf of Maine (“NFN”)
 - Piscataquis County Commissioners (“PI”)
 - Piscataquis County Economic Development Council (“PCEDC”)

¹⁷ Plum Creek objected to the request of the Open Space Institute for Interested Person status on the grounds that the July 5, 2007 request was untimely. The Chair denied the objection, finding no prejudice to Plum Creek or any other party.

¹⁸ Two parties which originally petitioned for Intervenor status (the Town of Jackman and the Rockwood Volunteer Fire and Rescue Department) withdrew their petitions to intervene and requested instead to participate in the more limited capacity of governmental review agencies. The Chair accepted and approved the request.

- Somerset County Commissioners (“SO”)
- Sportsman’s Alliance of Maine (“SAM”)
- Town of Greenville (“GV”)¹⁹

(b) Interested Persons

- Bangor Region Chamber of Commerce (“BRCC”)
- Forest Society of Maine (“FSM”)
- FPL Energy Maine Hydro LLC, Merimil Limited Partnership, Owners of Brassua Dam, and Kennebec Water Power Company (“DAM OWNERS”)
- Maine Tourism Association (“MTA”)
- Open Space Institute (“OSI”)
- Somerset Economic Development Corporation (“SEDC”)
- The Maine Highlands Corporation (“TMHC”)
- The Nature Conservancy (“TNC”)
- Western Mountains Foundation (“WMF”)²⁰

The Order provided that Intervenors were expected to attend all procedural conferences and all portions of the hearings, while attendance by Interested Persons throughout the hearings was not required. Both Intervenors and Interested Persons were afforded the rights of full parties to participate in the process.

- (4) The August 10, 2007 First Procedural Order also set forth an evidentiary ruling on a December 14, 2006 letter from MA-NRCM requesting that the Conservation Framework²¹ being proposed by Plum Creek be deemed irrelevant to the proposed Concept Plan and inadmissible as evidence at the hearings. A ruling on this request had been delayed until Intervenors and Interested Persons were identified to ensure their right to be heard on the matter, and the Chair afforded all parties an opportunity to comment on the MA-NRCM request in writing. The Chair denied the request to exclude evidence of these transactions from the hearings, concluding “It is the Chair’s judgment that the moving parties’ criticisms of the Conservation Framework must be considered during and through the public hearing process, and are not properly addressed by a threshold ruling excluding this evidence.”

¹⁹ In November 2007, the Chair rescinded the Intervenor status of the Town of Greenville (*see* Fifth Procedural Order, Nov. 15, 2007).

²⁰ The Western Mountains Foundation changed its name to Maine Huts and Trails during this proceeding and is identified as such in the Concept Plan; however it is nonetheless referenced as “WMF” herein.

²¹ *See* Petition, Apr. 27, 2006, Cover Letter; Plum Creek, Oct. 25, 2006 filing, Memorandum of Agreement between Plum Creek and TNC regarding the lands subject to the Conservation Framework; Plum Creek, Nov. 21, 2006 filing, Purchase and Sale Agreement between Plum Creek and TNC regarding the lands subject to the Conservation Framework; and Plum Creek, May 31, 2007 filing, Fully Executed Amendment to the Purchase and Sale Agreement between Plum Creek and TNC regarding the lands subject to the Conservation Framework; *see also* paragraph 7.B.(2)(i) for a synopsis of the Conservation Framework.

- (5) On July 26, 2007, FEN-RESTORE filed a motion to dismiss Plum Creek's petition on the grounds that the Commission lacked adequate statutory authority to approve a concept plan containing terms that could be amended only with the agreement of the landowner. The Chair provided all parties an opportunity to file written comments on the motion by August 31, 2007. MA-NRCM and NFN submitted letters joining in the motion, while Plum Creek, FSM, COALITION, and PI all filed memoranda in opposition. The Commission voted unanimously to deny the motion in a written decision on October 10, 2007.
- (6) The parties filed prefiled direct and rebuttal testimony during August and September 2007. Collectively, the parties filed testimony on behalf of 170 different witnesses. In addition, eighteen governmental review agencies filed review comments. Seven parties filed various objections to the form and substance of the prefiled testimony, and the Chair ruled on those objections in the Second and Third Procedural Orders, issued on October 16 and 23, 2007, respectively.
- (7) On September 5, 2007, the Commission decided on a schedule for the adjudicatory and public hearings. The public hearings were scheduled for November 4, 2007 in Augusta, November 17, 2007 in Portland and November 18, 2007 in Greenville. The adjudicatory hearings were scheduled for two full weeks during the weeks of November 5, 2007 and November 12, 2007 in the Bangor area. The Commission's written decision was expressly subject to amendment in the event that new information arose that would make proceeding with the hearing schedule an undue burden on the parties.
- (8) On October 4, 2007, the Chair issued a memorandum to the parties setting forth a proposed structure for the adjudicatory hearings, and inviting the parties to comment on the proposed structure. Seven parties submitted comments. On October 26, 2007, the Chair issued the Fourth Procedural Order containing a three-page outline organizing the hearings according to the subject matter of the witnesses' prefiled and rebuttal testimony and governmental review agencies' comments. The Chair also requested that each party designate the individual witnesses which they wished to cross examine, and submit the amount of time they requested for cross examination in the aggregate. Responses from the parties listed 165 witnesses for cross examination, reflecting over 700 separate examinations. The parties collectively requested 32 full days of hearing time for cross examination alone.
- (9) On October 5, 2007, Plum Creek submitted a letter to the Commission indicating its intent to make certain amendments to Zoning Petition ZP 707 to conform to the prefiled testimony it filed. Several parties objected to Plum Creek's amendments and requested a delay in the hearings as a consequence of the amendments.
- (10) On October 10, 2007, the Commission voted to rescind its schedule for the hearings in light of Plum Creek's anticipated October 2007 amendments to its petition. On October 17, 2007, Commission staff notified all interested parties that public hearings were postponed.

- (11) Plum Creek filed its amendments to its petition on October 12 and 26, 2007. The October 2007 Zoning Petition included, *inter alia*, the following proposed changes to the development, conservation and additional plan elements, as compared to the April 2007 Zoning Petition:
- (a) Proposed Development Elements
 - (i) Residential development was removed from a portion of the Route 6/15 Corridor development area.
 - (b) Proposed Conservation Elements
 - (i) The Bureau of Parks and Lands (“BPL”) was added as a third-party holder of the Moosehead Legacy Conservation Easement.
 - (ii) A management advisory team was proposed to be created to assist the landowner in applying best science to guide forest management on the lands protected by the Balance Conservation Easement and the Moosehead Legacy Conservation Easement.
 - (c) Proposed Additional Plan Elements
 - (i) A grant of permanent public right-of-way easements for vehicular access over approximately 57 miles of land management roads to the State of Maine was added.
 - (ii) The grant of permanent easements over the ITS snowmobile trail system was expanded to include the ITS 110 mile trail.
 - (iii) The community fund was eliminated. A new fund (the “Moosehead Region Community Stewardship Fund” or “CSF”) was proposed whose purpose was to “develop and implement a region-wide recreation management plan and community development initiatives.”²² The CSF was proposed to be funded by 2 percent of the initial sale price, and ½ percent of subsequent sales prices, of the proposed 975 residential lots.
 - (iv) A 50-acre land donation to BPL to address future recreation needs was added.
- (12) On November 5, 2007, the Chair established deadlines of November 20 and 27, respectively, for supplemental prefiled direct and rebuttal testimony related to Plum Creek’s October 2007 amendments.

²² Plum Creek, Oct. 5, 2007 filing.

- (13) On November 7, 2007, the Commission voted to establish a new hearing schedule as follows: Public hearings on December 1, 2007 in Greenville, December 2, 2007 in Augusta, December 15, 2007 in Portland and December 16, 2007 in Greenville; and adjudicatory hearings taking place over the course of four weeks in December 2007 and January 2008, all in Augusta. Pursuant to the applicable provisions of the Maine Administrative Procedures Act (5 M.R.S.A. Ch. 375) and Ch. 5 of the Commission's rules, a public hearing notice containing these authorizations was published on November 14, 2007.
- (14) On November 8, 2007, the Commission traveled with its staff and consultants and a reporter to various places in the Moosehead Lake region.²³ The site visit included stops at a number of locations along the Lily Bay Road and Route 6/15 on both the east and west sides of Moosehead Lake.
- (15) On November 15, 2007, the Chair issued the Fifth Procedural Order, which, upon consideration of comments filed by the parties, established panels of witnesses according to the subject matter of their testimony, and assigned those panels to specific hearing dates. The Order also allotted a fixed amount of time for each party to use, as each party determined, on any combination of cross, redirect or re-cross examination.
- (16) On November 20, 2007, the Chair issued the Sixth Procedural Order, denying objections from Plum Creek and FEN-RESTORE to certain witness panel assignments, and denying objections from seven parties to the allocation of time for examination of witnesses during the hearings.
- (17) On November 29, 2007, the Chair issued the Seventh Procedural Order revising the witness panels and order of appearance to reflect prefiled testimony filed on November 20 and 27, and addressing various remaining pre-hearing procedural issues.

²³ At the first procedural conference, parties had been apprised that each Commission member had also taken a helicopter flight of the Moosehead Lake region accompanied by Commission staff or consultants. Parties had also been apprised that Commission members may wish to take additional site visits and, given the practical difficulties in conducting site visits with such a large number of parties and such a vast area, the Commission's preference would be to conduct such site visits without parties present. The Chair inquired whether any party objected to handling site visits in this manner, and no objections were stated. Pursuant to the First Procedural Order, parties were provided the opportunity to comment on the places that should be visited by the Commission. All site visits and helicopter flights attended by one or more Commissioners are documented with memoranda filed in the administrative record.

E. December 2007 – April 2008: Public Hearings And Briefings

- (1) The Commission held four full days of public hearings in order to receive oral testimony on the Concept Plan from members of the public. On December 1, 2007 in Greenville, 67 citizens provided oral testimony. On December 2, 2007 in Augusta, 125 citizens provided oral testimony. On December 15, 2007 in Portland, 140 citizens provided oral testimony. On January 19, 2008 in Greenville, 145 citizens provided oral testimony. All such testimony was sworn, and although all formal parties to the adjudicatory proceeding were afforded the right to cross examine witnesses at the public hearings, no party availed itself of that right.
- (2) The Commission held eighteen full days of adjudicatory hearings commencing on December 3, 2007. The adjudicatory hearings were held in Augusta. On the first day of the hearing, each of the twenty-one parties who had submitted prefiled testimony²⁴ provided opening statements to the Commission summarizing their position on the Concept Plan. The balance of the hearings was almost entirely devoted to cross examination, redirect examination and re-cross examination of the witnesses who had prefiled in writing their direct testimony during the various August - November 2007 filing periods. Approximately 170 witnesses who had prefiled their direct testimony were made available for cross examination by each of the parties. In recognition of the fact that many of the Intervenor and Interested Persons were allied with one another in either their support or opposition to the Concept Plan, and to protect the integrity of the process, the Chair established clear rules prohibiting leading questions during cross examination of friendly witnesses. These rules were strictly enforced throughout the hearings against both Concept Plan proponents and opponents. Witnesses appeared at the hearing for examination on panels that were organized by subject matter of testimony, and each day of hearing was devoted to specific topics. In order to assist Commission members in reviewing and considering the voluminous record in preparation for each day of hearing, Commission staff and consultants provided the Commissioners with reference sheets that identified issues raised by each topic, with cross references to prefiled testimony on the topic and governing statutory and regulatory review criteria. The hearings went into recess on December 14, 2007.
- (3) On December 20, 2007, the Chair issued the Eighth Procedural Order. The Order primarily addressed whether written comments on the proposed Concept Plan from the U.S. Environmental Protection Agency (“US EPA”) and the U.S. Fish and Wildlife Service (“US FWS”) should be stricken from the record because representatives of those agencies declined the Commission’s request to appear at the adjudicatory hearings for questioning. Plum Creek, ATVM, MSCC and SEDC requested that the comments be stricken, while AMC, FEN-RESTORE, MA-NRCM and NFN requested that the comments be admitted and considered. The Order overruled the objections and admitted the comments to the record, finding that the authors of such unsworn comments from governmental review agencies need not be subject to cross examination in order for the comments to be considered, and noting that the fact that the authors were not subject to

²⁴ Four Interested Persons (BRCC, MTA, SO and TMHC) did not submit prefiled direct or rebuttal testimony during any of the August – November 2007 filing periods, and thus were not afforded the opportunity to present opening statements or cross examine witnesses.

cross examination would be taken into account by the Commission in assessing the weight the comments should be given.

- (4) On December 27, 2007, on behalf of the Chair, Commission staff wrote to attorneys for Plum Creek and MA-NRCM expressing the Commission's interest in having two expert witnesses for those parties, Thomas Gorrill and Thomas Errico, each of whom had already appeared and been subject to extensive examination at the hearings, provide additional prefiled written testimony in response to certain specific questions regarding traffic generation projections. The letter set forth the questions in detail and directed both witnesses to provide any additional prefiled testimony they may wish to submit not later than January 11, 2008. Each witness submitted additional prefiled testimony in response to this letter, and appeared at the hearings again on January 16, 2008 for additional cross examination on that testimony.
- (5) On December 28, 2007, the Chair issued the Ninth Procedural Order governing various witness scheduling matters upon the resumption of the adjudicatory hearings in January 2008.
- (6) On January 14, 2008, the Chair issued the Tenth Procedural Order which ruled on various evidentiary issues and objections and requests for additional time for examination of witnesses, and which made final adjustments in the schedule for the appearance of witnesses during the January 2008 hearings.
- (7) The adjudicatory hearings resumed on January 15, 2008 and concluded on January 25, 2008.

During the hearings, Plum Creek had conceded that the Concept Plan as filed, in light of its size and complexity, was imperfect, and that it was willing to see its Concept Plan amended to resolve certain flaws, including those identified through the hearing process. Before adjourning the hearings, the Chair sought advice from counsel to the Commission on procedural options for the post-hearing process. Counsel advised that the Commission could (i) proceed directly to an up-or-down vote on the Concept Plan as filed, (ii) allow Plum Creek to propose amendments it deemed necessary, or (iii) direct its staff and consultants to develop and propose to the Commission, for its review, regulatorily required amendments to the Concept Plan. If the second or third options were chosen, counsel further advised that procedural protections would be necessary to ensure all parties were given an adequate opportunity to be heard on any proposed amendments. Each Commission member in attendance expressed support for the third procedural option in which Commission staff and consultants developed proposed amendments to the Concept Plan as filed to satisfy governing review criteria. The Chair and Commission counsel then generally outlined for the parties a proposed post-hearing process governing briefing and management of the record, and invited all the parties to comment on those issues in writing by January 30, 2008. Many of the parties in fact filed such comment.

- (8) On February 5, 2008, the Chair issued the Eleventh Procedural Order. Consistent with the expressed wishes of Commission members, and noting substantial support for this approach in the written comments of the parties, the Order directed Commission staff and consultants to develop for the Commission's review proposed amendments to the Concept Plan as filed in order to satisfy governing review criteria, and to do so according to a process that allowed all parties the opportunity to be heard on such proposed amendments.²⁵ The Order also provided all parties an opportunity to file post-hearing briefs by March 7, 2008, and any reply briefs by March 21, 2008. No page limits were established for the briefs. The Order encouraged parties in their briefs to address whether there were legal deficiencies in the proposed Concept Plan, and if so to identify them and explain whether and how they could be resolved.
- (9) At a March 5, 2008 meeting, Commission staff recommended a process for the Commission's consideration of potential Concept Plan amendments. That proposal consisted of Commission staff and consultants first identifying a list of core issues to resolve in the Concept Plan, and then providing a recommendation to the Commission as to how to resolve each such issue. The Commission would consider the recommendations and make a preliminary determination as to how to resolve these issues, and then direct staff and consultants to draft, again for Commission review, actual concept plan amendment language to implement the Commission's determinations. Each step along the way would be accompanied by notice and an opportunity for comment. The Commission endorsed this recommended process.
- (10) Post-hearing briefs and reply briefs were filed on behalf of seventeen parties. The briefs ranged from three to 157 pages in length. Many of the briefs identified perceived legal deficiencies in the Concept Plan as filed and proposed (in general or specific terms) how those deficiencies should be resolved. Several briefs urged outright rejection of the Concept Plan, arguing that it was fundamentally flawed and therefore could not be salvaged through an amendment process, while others made the case that the Concept Plan as filed satisfied all governing review criteria and therefore should be approved without amendment.

²⁵ The Commission elected to consider amendments to the Concept Plan for a number of reasons. First, although the hearings revealed that various components of the Concept Plan as filed would not satisfy regulatory criteria, the Commission believed that both the overall purpose and intent of the proposed Concept Plan, as well as many individual components and approaches contained in it, were consistent with regulatory requirements and the purpose for which the Commission created the concept planning mechanism. Plum Creek also repeatedly noted its openness to the possibility of amending its proposal to address deficiencies that were identified through the process. Second, based on its review of the testimony and filings by the parties, the Commission concluded that the Concept Plan's deficiencies appeared resolvable. Third, the Commission concluded that the most judicious and economical use of its finite resources would be to explore the potential for Concept Plan amendments during the still-pending process and based upon the existing administrative record, rather than simply rejecting the Concept Plan and sending the petitioner away to re-apply with a modified proposal that would initiate an entirely new proceeding. Finally, the Commission concluded that as a matter of efficiency it would be far preferable for its staff and consultants to develop any necessary Concept Plan amendments and then allow Plum Creek the opportunity to accept them or not, rather than for Plum Creek to attempt to do so. For all of these reasons it was the Commission's considered judgment that, following the adjudicatory hearings and post-hearing briefing, it was most appropriate for the agency, through its staff and consultants, to speak next on the question of what changes were necessary to render the Concept Plan legally approvable.

- (11) On April 23, 2008, Commission staff and consultants provided to the parties for their comment a draft list of core issues for the Commission to resolve during deliberative sessions. Several parties submitted comments on the draft.
- (12) On April 24, 2008, the Chair issued the Twelfth Procedural Order which granted leave for the admission into the record of a traffic movement permit for the Concept Plan issued by the Maine Department of Transportation (“MaineDOT”) on February 26, 2008, and established a deadline for the filing of any comments related to the permit. The Order also took official notice, at the request of MA-NRCM, of the U.S. Department of the Interior’s proposed rule governing critical habitat designation for Canada Lynx in Maine, published in the Federal Register on February 28, 2008, and ruled on several objections to material filed with the post-hearing briefs.
- (13) At a May 7, 2008 meeting, the Commission approved the list of core issues that would serve as its agenda for two days of deliberations, and provided additional guidance on the course of its decision-making process. The Commission endorsed a process by which it would provide its staff and consultants with preliminary direction as to how each of the core issues presented should be resolved during its deliberations. Staff and consultants would then immediately prepare a write-up of the Commission’s determinations on these core issues. This write-up would show generally how the Concept Plan as proposed would need to be amended to satisfy the governing review criteria. Based on that write-up, the Commission would then determine whether it wished to continue with the process by directing staff and consultants to draft actual Concept Plan amendment language, or alternatively to terminate the process and proceed to an up-or-down vote on the Concept Plan as filed. At the same time, Plum Creek would be asked to inform the Commission whether it wished to continue with a process that would result in its Concept Plan being amended according to the terms of the write-up.²⁶ If both the Commission and Plum Creek wished to continue the process, Commission staff and consultants would then prepare draft Concept Plan amendment language for public, party and agency comment, and for Commission review.

²⁶ This opportunity reflects the fact that concept plans are landowner initiated, and ultimately the petitioner-landowner must consent to any amendments to the concept plan it proposed before the Commission may lawfully approve it. *See generally* CLUP, 1997, pp. C6 - C7 (generally discussing the need for agreement between the landowner and the Commission on the terms of the concept plan).

F. May 2008 – September 2009: Commission-Generated Amendments To Zoning Petition ZP 707 And Final Action

- (1) The Commission deliberated on the list of core issues for its resolution during two full days of meetings on May 27 and 28, 2008. During these deliberations, the Commission considered the recommendations of its staff and consultants on whether and how each core element of the Concept Plan could be amended in order to satisfy governing review criteria. The Commission provided its staff and consultants with the necessary guidance to prepare a write-up of its determinations with respect to each core element.
- (2) On June 4, 2008, the Commission posted for public comment the written product of its May 27 and 28, 2008 deliberations, which consisted of 153 pages describing the Commission's preliminary determinations about whether and how each core element of the Concept Plan as filed would need to be amended to satisfy governing review criteria. Both parties and members of the public were provided until July 11, 2008 for the filing of comments. The Commission received voluminous comments from Plum Creek and other parties, as well as members of the public and governmental review agencies.
- (3) On August 26, 2008, Commission staff and consultants sent a request for additional information to Plum Creek, copied to the parties, seeking further information regarding certain positions taken in Plum Creek's July 11, 2008 comments concerning, *e.g.*, the required size of certain development areas and potential limitations on wind power development within the Plan Area. The request called for a written response to be filed by September 2, 2008, which Plum Creek filed on that date.
- (4) On September 4, 2008 the Chair issued the Thirteenth Procedural Order, which established a deadline of September 12, 2008 for submission of any comments on Plum Creek's September 2, 2008 response to the additional information request. The Order also described the format and purpose of upcoming deliberative sessions to be held on September 23 and 24, 2008.
- (5) On September 12, 2008, four parties filed comments and/or objections to Plum Creek's September 2, 2008 submission. Two parties filed substantive comments, and two parties (FEN-RESTORE and NFN) filed objections. Both parties' objections argued that Plum Creek's September 2, 2008 submission contained information that was not already in the record. FEN-RESTORE's objection also argued that the Commission was without authority to consider any amendments to a proposed Concept Plan, and that its only lawful options were to approve or deny such a plan as filed by a petitioner.
- (6) On September 19, 2008 the Chair issued the Fourteenth Procedural Order. The Order denied the objections to Plum Creek's September 2, 2008 submission, finding that although the submission contained information not already in the record, the opportunity for all parties to comment on that information – an opportunity which no party claimed to be inadequate – cured any potential prejudice to the parties. The Order also denied FEN-RESTORE's broader objection to the Concept Plan amendment process generally, finding in part:

The Chair's judgment ... is that the consideration of amendments through an open and public process appropriately balances the Commission's interest in using its scarce administrative resources economically, the petitioner's interest in receiving a timely decision from the Commission, and the rights of all participants in the process to a fair opportunity to be heard on the merits.

- (7) On September 23 and 24, 2008, the Commission held two more days of deliberations to consider public and party comments received on its June 4, 2008 preliminary determinations on whether and how each core element of the Concept Plan as filed would need to be amended to satisfy governing review criteria. Twenty-one parties (all parties still actively participating in the proceeding, including Plum Creek) were provided an opportunity to make an oral "closing statement" to the Commission at the outset of the deliberations in order to summarize their position on the Commission's preliminary determinations. During the deliberations, the Commission made several changes to its June 4, 2008 preliminary determinations. The Commission directed its staff and consultants to reduce those changes to writing.
- (8) At an October 1, 2008 meeting, the Commission approved the written changes to its June 4, 2008 preliminary determinations regarding Concept Plan amendment. In order to decide whether it was an efficient use of resources to direct its staff and consultants to develop Concept Plan amendment language consistent with its October 1, 2008 core amendments, the Commission also authorized the Chair to request formal responses from Plum Creek and other implementing parties as to whether those parties would accept the Commission's amendments. The Chair did so by letter of the same date.
- (9) On October 14, 2008, Plum Creek and the other implementing parties each responded by letter stating their acceptance of the Commission's October 1, 2008 core amendments, conditioned on the development of acceptable final amendment language for the Concept Plan itself.
- (10) On October 29, 2008, the Chair issued the Fifteenth Procedural Order. The Order provided parties until November 26, 2008 to submit proposed language to amend the Concept Plan in accordance with the Commission's October 1, 2008 core amendments. The Order stated that Commission staff and consultants would consider these submissions in the course of preparing their own recommended implementing language, which itself would subsequently be posted for public comment. The Order also established a deadline of December 8, 2008 for additional party comment on the potential locations of wind power projects within the Plan Area, and provided for additional, staggered opportunities for both Plum Creek and all parties to submit additional comments on proposed vegetation clearing standards.
- (11) On November 16, 2008, seven parties and governmental review agencies filed proposed implementing language in accordance with the Fifteenth Procedural Order.
- (12) Between November 21 and December 19, 2008, three parties submitted comments on proposed vegetation clearing standards in accordance with the Fifteenth Procedural Order.

- (13) On December 8, 2008, nine parties filed comments on the potential locations of wind power projects in accordance with the Fifteenth Procedural Order.
- (14) On January 9, 2009, FSM filed a request for leave to submit for Commission staff and consultants' consideration additional proposed implementing language in connection with the Moosehead Region Conservation Easement ("MRCE") and the associated multi-resource management plan. On January 12, 2009, the Chair established a deadline of January 16, 2009 for objections to FSM's request for leave. On January 15, 2009, FEN-RESTORE filed a letter objecting to FSM's request for leave. On January 29, 2009, the Chair denied FEN-RESTORE's objection and granted FSM's request for leave, finding in part that Commission staff and consultants' consideration of FSM's submission would not prejudice any party in light of the comment period that would later be provided on staff and consultants' proposed Concept Plan amendment language.
- (15) At a March 4, 2009 meeting, Commission staff and consultants presented their draft Concept Plan amendment language (dated March 2, 2009) to the Commission, which consisted of specific, written amendments to Plum Creek's October 2007 Concept Plan and all its appendices. This language carried out the Commission's more general determinations embodied in its October 1, 2008 amendments required to the Concept Plan's core elements. The Commission posted the draft Concept Plan amendment language to a 30-day public comment period.
- (16) The comment period on the draft Concept Plan amendment language closed on April 4, 2009 with the Commission having received comments from nine parties and six governmental review agencies, as well as over 200 public comments.
- (17) On May 22, 2009, Commission staff and consultants provided to the Commission and publicly released their recommended modifications to the March 2, 2009 draft Concept Plan amendment language, based on staff and consultants' evaluation of the comments submitted by parties, governmental review agencies and members of the public. On May 26, 2009, Commission staff and consultants provided the Commission and publicly released a 28-page memorandum highlighting and explaining these modifications.
- (18) On June 1, 2009, the Chair issued the Sixteenth Procedural Order. The Order granted a request for leave by AMC to introduce into the record information regarding an agreement reached among AMC, the First Roach Pond Homeowners' Association and Plum Creek regarding vehicular access to lots within the Association. The Order also granted a request from Plum Creek to exclude a 0.5 acre parcel in Elliottsville Township and a 1.8 acre parcel at the East Outlet of Moosehead Lake from the Plan Area.
- (19) At a June 2, 2009 meeting, the Commission held deliberations on staff and consultants' May 22, 2009 recommended Concept Plan amendment language. Each party who had filed comments on the March 2, 2009 draft Concept Plan amendment language was provided an opportunity to address the Commission orally at the outset of the meeting. Following a full day of deliberations, the Commission directed staff and consultants to make certain additional modifications to the May 22, 2009 recommended Concept Plan amendment language. This final language represented the Commission's determination on what amendments to the Concept Plan as filed were necessary to satisfy governing

review criteria. The Commission directed staff and consultants to perform the necessary editing, and delegated to its Chair the authority to review and approve final language. The Commission also authorized its Chair to ascertain in writing whether Plum Creek and the other implementing parties were prepared to unconditionally accept and implement those responsibilities under the Concept Plan as finally amended.

- (20) On June 9, 2009, the Chair sent a letter to Plum Creek and the other implementing parties to ascertain in writing whether each would unconditionally accept and implement its responsibilities under the Concept Plan as finally amended. The letter requested responses not later than June 23, 2009.
- (21) On or before June 23, 2009, Plum Creek and the other implementing parties confirmed in writing that each would unconditionally accept and implement its responsibilities under the Concept Plan as finally amended. Plum Creek also stated that it considered the Concept Plan as finally amended to be Plum Creek's landowner-initiated Concept Plan, thus formally replacing its October 2007 proposal.
- (22) The final amended Concept Plan, set forth in Attachment B herein, includes, *inter alia*, the following changes to the development, conservation and additional plan elements from the elements contained in Plum Creek's October 2007 Zoning Petition:
 - (a) Development Elements
 - (i) Elimination of all development proposed on the north shore of Long Pond and a reduction of total units from 110 to 55 within the remaining development sub-areas on the south shore.
 - (ii) Reductions to the size and changes to the configuration of certain development areas, including the Lily Bay, Big Moose Mountain, Moose Bay, Route 6/15 Corridor, Rockwood/Blue Ridge, Brassua Lake, and Long Pond.
 - (iii) Elimination of certain proposed development-related land use zones and replacement with the following land use zones:
 - The Residential Development Zone ("D-MH-RS1 zone"), which accommodates residential development in the Beaver Cove, Upper Wilson Pond, Long Pond, and Brassua Lake northeast shore development areas, and also allows residential-scale commercial development by special exception in the Brassua Lake south peninsula, Route 6/15 Corridor, and Rockwood/Blue Ridge development areas.
 - The Residential/Resort Optional Development Zone ("D-MH-RS2 zone"), which accommodates residential development and residential scale-commercial development, and also provides the option for resort development in the Moose Bay development area.

- The Resort Development Zone (“D-MH-RT zone”), which requires nature-based resort development in the Lily Bay and Big Moose Mountain development areas.
 - The Primitive Resort Development Zone (“D-MH-PR zone”), which restricts uses to size-limited back country huts, commercial sporting camps and remote rental cabins, and associated primitive and motorized recreational uses in the Indian Pond and East of Lily Bay Road development sub-areas.
- (iv) Establishment of the following new and modified post-rezoning permit review processes:
- For all development areas, modified subdivision and development permit application reviews subject to statutory and regulatory criteria and the terms of the Concept Plan; and
 - For development areas where development will likely occur in phases over an extended period of time, new requirements for long-term development plan reviews that ensure that development is well-planned and uses land efficiently, avoids and otherwise minimizes impacts to recreational resources and high-value habitat features and functions, and, in the case of nature-based resort development, provides for resort cores.
- (v) Establishment of minimum mandatory declaration elements, which must be recorded against all lands within development areas, that impose permanent restrictions beyond the thirty-year term of the Concept Plan on the number of units and/or intensity of development via restrictive covenants within the Lily Bay, Upper Wilson Pond, Indian Pond and Long Pond development areas²⁷ and require the notification of new landowners of certain adjoining landowners’ rights with respect to Federal Energy Regulatory Commission (“FERC”) licensing projects on Brassua Lake, Indian Pond and Moosehead Lake.

²⁷ While Plum Creek, in its October 2007 Rezoning Petition, had proposed to increase the conservation easement acreage by the amount of land within each development area that remained undeveloped at the end of the thirty-year term of the Concept Plan, the Commission struck this proposal and instead required a permanent restriction of development rights in those areas where such restrictions were supported by record evidence. However, in development areas proximate to infrastructure and existing communities, such as the Moose Bay, Rockwood/Blue Ridge and Brassua Lake south peninsula development areas, the Commission finds that the perpetual preclusion of development rights would inappropriately eliminate the ability of those communities to respond to future (beyond 30 years) needs that cannot be anticipated today.

- (vi) New and enhanced land use standards and procedures establishing, *inter alia*:
- Limits on shoreland structures (including temporary docks, moorings and boat launches) within certain development areas, and consultation with governmental review agencies (including the Maine Natural Areas Program (“MNAP”), the Maine Department of Inland Fisheries and Wildlife (“MDIFW”) and the State Soil Scientist) regarding the locations, types and numbers of shoreland structures prior to filing subdivision or development permit applications;
 - A lynx-traffic monitoring plan that will (i) verify the accuracy of certain predictive record evidence relied upon by the Commission in its evaluation of Canada lynx impacts, and (ii) ensure that development contemplated under the Concept Plan will cause no undue adverse effect to Canada lynx in the Lily Bay sub-region from traffic generated by Concept Plan related development;
 - “No disturbance areas” comprising certain high-value natural resources and land use restrictions that, *inter alia*, limit timber harvesting and road construction and prohibit structural development, filling and grading, and vegetation clearing;
 - Requirements for the layout and design of subdivisions, which provide more specific guidance for subdivision proposals than currently exists;
 - Requirements for the protection of scenic character, including: (i) vegetation clearing standards for back-lots, which establish performance standards for the visibility of cleared openings, building façades and building perimeters; (ii) standards for construction materials and building design for shorefront and back-lot structures, which establish limitations on exterior colors, window reflectivity, building mass, building height and exterior lighting; and (iii) ridgeline protection standards;
 - Procedures for evaluating and conducting vegetation clearing activities, which set forth certain permit application submission requirements in order for the Commission to evaluate development proposals for consistency with the back-lot vegetation clearing standards and the procedures that must be followed for any such vegetation clearing activities; and
 - Requirements for resort development areas to (i) develop resort cores containing short-term visitor accommodations, hospitality amenities and recreational facilities; (ii) sequence residential development in relation to minimum required short-term visitor accommodations; (iii) construct new on-site recreational facilities; and (iv) mitigate for impacts that arise beyond the boundaries of these development areas.

(b) Conservation Elements

- (i) Consolidation of the land area and conservation easement terms of the Balance Conservation Easement and the Moosehead Legacy Conservation Easement into one single, unified Moosehead Region Conservation Easement (“MRCE”).
- (ii) Numerous and substantial changes to the terms of the MRCE, including:
 - Establishing a definition of “Conservation Values” that clearly sets forth the natural and cultural resource values of the protected property which the MRCE is intended to protect;
 - Clarifying and conforming “Purpose” and “Whereas” clauses, and language in other portions of the MRCE so that, when read together, sections cannot be read to subordinate or eliminate the protection of Conservation Values when in conflict with forest management activities;
 - Specifying restrictions and holder responsibilities with respect to the review, approval and oversight of permitted non-residential land uses and structures (including recreational structures and uses, construction materials removal, septic field activities, water extraction, wind power development, telecommunications towers, roads, and utilities) which assure that Conservation Values are permanently protected;
 - Reducing the total number of subdivisions of the protected property to no more than ten, with no subdivision being smaller than 5,000 acres;
 - With respect to a landowner’s compliance with the MRCE terms, allowing the holder to rebut any presumption of compliance created by a landowner’s attainment of forest certification by a qualifying certification program which does not find a violation of the MRCE terms;
 - Establishing the right of the holder to remove any pre-qualified forest certification programs based on a demonstration of inadequacy of audit standards or procedures;
 - Clarifying the purpose of the Management Advisory Team (“MAT”) as advisors to the landowner and holder on appropriate forest management activities to protect the Conservation Values, and adding provisions that ensure that MAT advice is meaningfully considered by the holder and the forestry certification audit team and that all MAT and response documents are public;

- Substantially redrafting the multi-resource management plan attached to the MRCE in order to unambiguously set forth the specific programs and practices necessary to ensure that the Conservation Values (particularly wildlife values) are protected;
 - Establishing specific criteria with respect to the assignment of holder rights to another holder;
 - Naming BPL as the third party holder of the MRCE, and ensuring that BPL has: (i) all the rights of the holder, (ii) access to all information in the possession of the holder, (iii) the ability to replace the holder for non-performance, (iv) the right to independently undertake an enforcement action, (v) the responsibility to conduct an independent audit of the performance of the holder every three years, and publicly release the results, and (vi) the funding necessary to meaningfully fulfill its responsibilities;
 - Making clear that the Attorney General can independently enforce the easements;
 - Addressing more equitably the available monetary and non-monetary damages, relative burdens in an enforcement action, and payment of attorneys' fees with respect to enforcement actions taken by the holder, and clarifying the effect of payment of penalties for a violation of the MRCE if payment to LURC or MFS is made for the same violation;
 - Eliminating the degree of latitude under which the terms of the MRCE could be amended; and
 - Enhancing language to sufficiently protect the public's right of access to information, consistent with protection of proprietary landowner information.
- (iii) Creation of the Roaches Pond Tract Conservation Easement ("RCE"), to be held by BPL, that ensures that the Roaches Ponds Tract will, in perpetuity, serve to provide the requisite mitigation – by protecting certain primitive recreational values and enhancing primitive recreational opportunities – for adverse impacts likely to be caused by the development rights granted in the Concept Plan. The specific terms of the RCE include:
- Guaranteed non-motorized public access to the entire protected property;
 - Assured protection and management of remote, undeveloped, and non-motorized recreational opportunities, open and available to the public on a non-exclusive basis;

- Elimination of all residential, commercial and industrial development on the protected property, except for development and maintenance of a limited number of primitive campsites and shelters, self-service cabins and commercial sporting camps, and forest practices and related required structures; and
 - Limitations on the total number of subdivisions of the protected property to no more than three, with no subdivision containing less than 5,000 acres of land.
- (iv) Elimination of a time gap for the protection of the lands covered by the MRCE and RCE through a requirement that the MRCE and RCE be executed upon Concept Plan finalization²⁸ and prior to the issuance of any subdivision or development permits, and through a requirement to execute interim agreements that assure the terms of the MRCE and RCE will apply to the respective protected properties as of the Concept Plan effective date.
- (v) Requirement to create and endow stewardship funds for the monitoring and enforcement of the MRCE and RCE, which ensure that proper monitoring, enforcement and stewardship can be fully accomplished in perpetuity and on an ongoing basis.
- (vi) Elimination of the proposed management zones and replacement with a Concept Plan specific General Management Zone (“M-MH-GN zone”) that designates places within the Plan Area that are appropriate for forest management activities and other land uses and structures allowed under the terms and conditions of the MRCE.
- (vii) Regarding the treatment of protection subdistricts located within the boundaries of the Plan Area, explicit acknowledgment and reinforcement of the Commission’s legal authority to (i) review long-term development plans, subdivision or development permit applications based upon the standards and restrictions contained in natural resources laws and regulations in effect at the time of permit requests, regardless of whether the natural resource law or regulation is stricter than what exists at the time of Concept Plan approval, and (ii) require the applicant to meet these standards and restrictions unless the applicant can affirmatively demonstrate that the protections achieved by these current laws and regulations are unnecessary given site-specific considerations, or could be achieved equally or better in another way;²⁹

²⁸ The Concept Plan finalization date is the date upon which the deadline for all legally allowable appeals of the Commission’s approval of Zoning Petition ZP 707 has passed or, if the approval of the Concept Plan is appealed, the date upon which the last of all such appeals are decided in final non-appealable decisions.

²⁹ In testimony provided to the Commission by Plum Creek’s legal counsel on January 24, 2008 (Kraft and Hempelmann), each witness stated that this was his legal view of how the review process would work, and offered Plum Creek’s support for this approach by the Commission.

- (viii) Exclusion of the Roaches Ponds Tract from the P-RP Subdistrict, thereby freeing the property from the requirements of the Concept Plan's addendum to the Commission's rules (Ch. 10), as well as Concept Plan provisions requiring that Concept Plan amendments must be approved not only by LURC but by Plum Creek or its subsequent designee(s).
- (ix) Elimination of the so-called "Bog Properties" as a conservation element of the Concept Plan, based on the fact that no record evidence was submitted on this element's nexus to any of the governing review criteria.

(c) Additional Plan Elements

- (i) Replacement of the "peak-to-peak" hiking trail easement with the following additional plan elements:
 - Grants of permanent trail easements to the BPL, whose terms ensure trail development and maintenance is feasible and trails are located, designed, constructed and maintained so as to best meet recreational hiking needs in the region;
 - Donation of five trailhead parking areas to BPL, to use in conjunction with the trails; and
 - Provision of a \$1 million grant to BPL for the planning, design, construction and maintenance of hiking trails and associated infrastructure.
- (ii) Modifications to the language of the three trail easements (hiking, ITS snowmobile, and Mahoosucs-to-Moosehead) and the vehicular road easements to assure that each of these right-of-way easements is legally enforceable and perpetually protects the public's rights to access and use the properties covered by these easements for their specific intended purposes.
- (iii) Simplification of the sequencing and timing of execution of the vehicular road access easements across approximately 57 miles to be concurrent with a predefined number of unit approvals within development areas located either on the east or the west side of Moosehead Lake, rather than approvals of all development within certain development areas, and clarification regarding under what circumstances the obligation to execute these easements is extinguished.

- (iv) Instead of the CSF, the creation of the following three distinct and segregated funds, which are to be funded by a mandatory stewardship fee on certain development within the Plan Area:
 - The Moosehead Recreation Fund (“MRF”) designed to repay the \$1 million grant to BPL and fund outdoor recreation mitigation projects within and surrounding the Plan Area;
 - The Affordable Housing Fund (“AHF”) designed to help subsidize construction of affordable housing in the Greenville-Rockwood-Jackman area; and
 - The Wildlife and Invasive Species Fund (“WISF”) designed to fund projects focused on addressing wildlife protection and invasive species prevention/botanical communities protection needs, including education, outreach and/or mitigation.

- (23) On August 11, 2009, the Chair formally closed the hearing record in Zoning Petition ZP 707.

- (24) Today, on September 23, 2009, the Commission takes final action to approve the Concept Plan as amended and adopt the associated P-RP Subdistrict.

8. REVIEW CRITERIA

A. Statutory Criteria For Adoption Or Amendment Of Land Use District Boundaries

In accordance with 12 M.R.S.A. § 685-A(8-A), "A land use district boundary may not be adopted or amended unless there is substantial evidence that:

- (1) The proposed land use district is consistent with the standards for district boundaries in effect at the time, the comprehensive land use plan and the purpose, intent and provisions of [Ch. 206-A (the Land Use Regulation Law)]; and
- (2) The proposed land use district satisfies a demonstrated need in the community or area and has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area."

B. Statutory Criteria For Amendment Of Land Use Standards

In accordance with 12 M.R.S.A. § 685-A(8-B), "Adoption or amendment of land use standards may not be approved unless there is substantial evidence that the proposed land use standards would serve the purpose, intent and provisions of [Ch. 206-A (the Land Use Regulation Law)] and would be consistent with the comprehensive land use plan."

C. Ch. 10 Review Criteria For Concept Plans And Associated Redistricting

In accordance with Ch. 10.23,H of the Commission's rules, the Commission may approve a concept plan and any associated redistricting only if it finds that all of the following criteria are satisfied:

- (1) The plan conforms with redistricting criteria;
- (2) The plan conforms, where applicable, with the Commission's Land Use Districts and Standards;
- (3) The plan conforms with the Commission's Comprehensive Land Use Plan;
- (4) The plan, taken as a whole, is at least as protective of the natural environment as the subdistricts which it replaces. In the case of concept plans, this means that any development gained through any waiver of the adjacency criterion is matched by comparable conservation measure[s];
- (5) The plan has as its primary purpose the protection of those resources in need of protection, or, in the case of concept plans, includes in its purpose the protection of those resources in need of protection;

- (6) In the case of concept plans, the plan strikes a reasonable and publicly beneficial balance between appropriate development and long-term conservation of lake resources; and
- (7) In the case of concept plans, conservation measures apply in perpetuity, except where it is demonstrated by clear and convincing evidence that other alternative conservation measures fully provide for long-term protection or conservation.

D. Ch. 10 Review Standards For Structures Adjacent To Lakes

In accordance with Ch. 10.25,A (Review Standards for Structures Adjacent to Lakes) of the Commission's rules, the standards set forth below must be considered in applying the criteria for adoption or amendment of land use district boundaries to proposed changes in subdistrict boundaries adjacent to lakes. In applying the standards set forth below, the Commission shall consider all relevant information available including the Wildlands Lakes Assessment findings (Ch. 10, Appendix C of the Commission's rules), and relevant provisions of the Comprehensive Land Use Plan.

- (1) Natural and cultural resource values: The proposal will not adversely affect natural and cultural resource values identified as significant or outstanding in the Wildlands Lakes Assessment;
- (2) Water quality: The proposal will not, alone or in conjunction with other development, have an undue adverse impact on water quality;
- (3) Traditional uses: The proposal will not have an undue adverse impact on traditional uses, including without limitation, non-intensive public recreation, sporting camp operations, timber harvesting, and agriculture;
- (4) Regional diversity: The proposal will not substantially alter the diversity of lake-related uses afforded within the region in which the activity is proposed;
- (5) Natural character: Adequate provision has been made to maintain the natural character of shoreland[s];
- (6) Lake management goals: The proposal is consistent with the management intent of the affected lake's classification; and
- (7) Landowner equity: Where future development on a lake may be limited for water quality or other reasons, proposed development on each landownership does not exceed its proportionate share of total allowable development.

9. REVIEW OF EVIDENCE PERTAINING TO REVIEW CRITERIA, FACTUAL FINDINGS AND LEGAL CONCLUSIONS THEREON

In the following section, the Commission reviews the evidence in the vast administrative record by way of representative example, sets forth findings of fact based on the evidence, and applies governing review criteria to the factual record to reach legal conclusions.

The Commission's findings and conclusions are based on all the evidence in the record, and not only those examples of evidence recited herein. Because of the range and volume of testimony and comments received from parties, governmental review agencies and members of the public, it is not possible to list or acknowledge all of the evidence that led the Commission to reach the legal conclusions set forth herein. For example, over the course of this proceeding, the Commission listened to four full days of public oral testimony, accepted more than 3,800 individual letters and e-mails, and received over a dozen petitions containing more than 28,000 signatures from members of the public alone. This volume of public testimony and comment is unprecedented for a LURC proceeding. The public testimony and written comments addressed a broad spectrum of issues, and provided the Commission with a wide range of opinions, personal experiences, and factual information on most matters of substance discussed in the following section. That specific public testimony and comment is not frequently cited herein is not an indicator of its lack of value or relevance. To the contrary, public testimony and comment often resulted in or contributed to the multitude of significant changes to the Concept Plan that have occurred since April 2005, including the reduction of where development would occur from eighteen to six water bodies and the expansion of conserved lands from 11,000 acres to nearly 400,000 acres.³⁰

Where certain review criteria are overlapping in nature, those criteria are considered together. For instance, given their close relationship, paragraph 9.C. addresses consistency with the CLUP and consistency with the Land Use Law. Also, 12 M.R.S.A. § 685-A(8-A)(B) sets forth alternative bases upon which land use district boundaries may be adopted or amended.³¹ The Commission here applies and makes findings under both of these two alternative standards.

³⁰ See paragraphs 7.A.(3), 7.B.(2), 7.C.(2), 7.D.(10), and 7.F.(22) for a summary of the key changes to the development, conservation and additional plan elements of the Concept Plan since April 2005.

³¹ The statute reads in pertinent part:

8-A. Criteria for adoption or amendment of land use district boundaries. A land use district boundary may not be adopted or amended unless there is substantial evidence that: ...

B. The proposed land use district satisfies a demonstrated need in the community and has no undue adverse impact on existing uses or resources or a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area.

12 M.R.S.A. § 685-A(8-A)(B) (emphasis added).

A. Existing Uses And Resources Within And Surrounding The Plan Area

Note: For purposes of describing the existing uses and resources within and surrounding the Plan Area, the Commission considered the lands within the Plan Area, the approximately 29,500 acres comprising the Roaches Ponds Tract, and all water bodies within the boundaries of or contiguous with the boundaries of the P-RP Subdistrict and the Roaches Ponds Tract. These are collectively referred to below as “the area.”

The area is situated generally to the west and east of Moosehead Lake. It lies within the west-central part of Maine, known generally as the Moosehead Lake region. This region is noted for its mountains and water resources: The Boundary Mountains lie to the west, and the northern terminus of the Appalachian Range lies to the northeast; the Kennebec River headwaters flow through the region; and the area is rich in lakes, ponds, rivers and streams. The Moosehead Lake region is a place where forestry and recreation have existed for over 150 years.³²

This section generally describes the predominant existing resources and uses of the area, namely (i) commercial forestry, forest resources and other natural resources, and (ii) scenic and recreational resources and outdoor recreational uses. The area also supports a wide variety of other natural and cultural resources, many of which are representative of the jurisdiction’s extensive resource base. The existing Protection Subdistricts within the area³³ – including subdistricts that identify and protect lakes and ponds, rivers and streams, wetlands, mountain areas, soils and geology resources, aquifers and other resources – are an indicator of this variety.

Further details regarding the existing uses and resources within the area are contained in the administrative record.³⁴

(1) **Existing Forest And Other Natural Resources, And Existing Commercial Forestry Uses**

The area located on both the east and west of Moosehead Lake is largely undeveloped, forested and contains abundant and diverse natural resources. Except for a few residential structures existing on leased lots within the Plan Area,³⁵ no other residential development presently exists within the area. Similarly, except for several commercial sporting camps, small-scale campgrounds, and structures used for forest management activities, the area is free from commercial and industrial structures as well. As such, the entirety of the area constitutes a vast, nearly contiguous and unfragmented forest resource. This forest resource contains an abundant and diverse array of other natural

³² Petition, Oct. 27, 2007, Petition for Rezoning, Tab 9a, p. 1.

³³ For the Plan Area itself, these are listed *supra* at paragraph 3 and identified on the Official Land Use Guidance Maps of the 26 minor civil divisions comprising the Plan Area (*see* Concept Plan, Sep. 23, 2009, Appendix A).

³⁴ E.g., Plum Creek: Arsenault and Pelletier, Aug. 31, 2007 filing; Plum Creek: Daigle, Jun. 14, 2007, Impact of Plum Creek Petition for Rezoning and Concept Plan on Recreation Resources in the Plan Area, Appendix, parts 1-4; Plum Creek: Allen, Aug. 31, 2007 filing, pp. 18-26; LURC: Palmer, Aug. 31, 2007, A Review of the Potential Visual Effects from Implementing the Proposed Concept Plan for Plum Creek’s Lands in the Moosehead Lake Region; MDIFW-MNAP, Aug. 31, 2007 filing; AMC: Clish, Aug. 31, 2007 filing, pp. 8-13, Exhibit A.

³⁵ *See* Concept Plan, Sep. 23, 2009, Appendix C, Exhibit D.

resources, including extensive wetlands, rivers, streams, lakes, remote ponds, and other aquatic habitats; hundreds of miles of undeveloped shores and riparian areas; diverse and extensive wildlife, plant, and other terrestrial habitats, including habitats of rare, threatened and endangered flora and fauna and natural plant communities, and plentiful wildlife and fish life.

The area is part of a region that provides habitat for many of Maine's "Species of Greatest Conservation Need" as identified in Maine's Comprehensive Wildlife Conservation Strategy. Many of these species are currently tracked as rare, threatened, or endangered. The area is also part of the only location in the northeastern United States that is not transected by highways, making it especially ecologically valuable as an area of lower road density.³⁶ While comprehensive field surveys to identify occurrences of rare, threatened, endangered and other species have not been carried out in the region or within the area to date, reconnaissance-level surveys of the development areas and the lands covered by the MRCE have been conducted.³⁷ These survey results indicate that:

- The mosaic of early, mid- and late-successional forest conditions in the Plan Area created by multiple timber harvests over the past 100 years is conducive to supporting a wide array of wildlife species, including common species of mammals (e.g., moose, white-tailed deer, black bear and snowshoe hare), lesser common species of mammals (e.g., river otter, coyote, beaver and bobcat, Canada lynx, martens, ermine and mink), over 100 species of birds (e.g., warblers, flycatchers, thrushes and vireos, sparrows, finches, wading birds and waterfowl, raptors, crows, ravens and jays), and bird species of moderate to very high conservation value (e.g., bald eagle, olive-sided flycatcher, rusty blackbird, American woodcock, wood thrush, Canada warbler and spotted sandpiper);
- The majority of natural communities present within the Plan Area have been heavily influenced by multiple timber harvests and consequently are largely common and unexceptional. However, State-listed rare plants (e.g., lesser shinleaf, showy lady's slipper and swamp-fly honeysuckle), uncommon plant species (e.g., doll's eyes, rattlesnake fern, spikenard and mountain sweet cicely), and rare and exemplary natural communities (e.g., tall sedge fen, northern hardwood forest and northern white cedar swamp) have been documented within the Plan Area; and

³⁶ Plum Creek: Arsenault and Pelletier, Aug. 31, 2007 filing, Exhibit 3, pp. 72-88, Exhibit 4, pp. 64-66, and Exhibit 6, pp. 27-28; MDIFW-MNAP, Aug. 31, 2007 filing; MA-NRCM: Charry, Aug. 31, 2007 filing, p. 5-6.

³⁷ In 2006 and 2007, Plum Creek retained Woodlot Alternatives, Inc. ("Woodlot") to conduct a broad spectrum and comprehensive natural resource evaluation of existing conditions of selected areas within the Plan Area, including within development areas and conservation lands. These field surveys identified rare, significant, or otherwise unusual or unique natural resources that are or could potentially be present within each proposed development area – including significant wildlife habitats, streams and aquatic habitats, rare and exemplary botanical features, and wetlands of special significance – and assessed the potential impacts to such resources from Plum Creek's proposed development. The surveys also identified and characterized the natural resources within proposed conservation lands, and ascertained the ecological significance and overall public value of these areas. Woodlot documented nine rare and exemplary natural communities and ecosystems, fourteen rare plant populations, seven areas of additional wading bird and waterfowl habitat, two locations of the rare bog fritillary butterfly; two locations of the rare northern spring salamander; two Canada lynx locations, over 50 locations of rusty blackbird, over 35 locations for olive-sided flycatcher, an active northern goshawk nest, and a new location for least bittern. (Plum Creek: Arsenault and Pelletier, Aug. 31, 2007 filing.)

- The lands covered by the MRCE include many significant rare plant or wildlife populations, rare or exemplary natural community occurrences and outstanding fishery resources. Noteworthy and significant identified features include: (i) exemplary Mixed Tall Sedge Fens along the southern shore of Spencer Pond; (ii) extensive subalpine Bicknell's thrush habitat and several rare plant occurrences within the Baker and Lily Bay Mountain complex; (iii) rare plants and rare and exemplary communities and ecosystems within Little Indian Bog in Indian Stream Township; (iv) large wetland complex and associated deer wintering area, wading bird and waterfowl habitat, and the rare northern firmoss population around Mud Pond in the Town of Beaver Cove; (v) occurrences of the bog fritillary butterfly within Soldiertown Bog and associated peatlands around Luther Pond; (vi) exemplary Spruce-Fir-Northern Hardwoods Ecosystem associated with Blue Ridge; (vii) exemplary and late successional mixed forested ecosystem and fragrant wood fern occurrence on Big Moose Mountain; (viii) occurrence of least bittern in a beaver-impounded wetland in Long Pond Township; (ix) blueleaf sedge populations and wading bird and waterfowl habitat associated with Muskrat Pond and Mud Pond in Thorndike Township; and (x) numerous rusty blackbird and olive-sided flycatcher occurrences throughout the Plan Area.

The forest resource also supports commercial forest management activities by Plum Creek and its agents. Nearly the entirety of the Plan Area is an active commercial working forest, and evidence of timber operations and harvesting activity (including tree thinned areas, cleared openings, stumps and slash, skidder paths and unpaved wood haul roads) is common throughout. Forestland that has not been harvested largely exists at elevations above 2,700 feet and as vegetative buffers around water bodies. These buffers create an overall effect that the area is more "natural" when the shoreline is viewed from locations on the water.

To manage its entire 928,000 acre land ownership in Maine, of which the area comprises approximately 45 percent, Plum Creek directly employs 40 people and contracts for logging and other services with another 600 people.³⁸ Plum Creek supplies harvested timber to 70 mills in Maine. Representatives from two of these mills testified before the Commission as to the importance of Plum Creek's timber to their mill operations.³⁹ For example, C. Charles Lumbert, president of the Moose River Lumber Company and employer of 80 people on a full-time basis, testified that these forestry operations provide a "steady and sustainable supply of lumber" to his company and three others located in the vicinity of the area.⁴⁰

Numerous other individuals testified to the importance of the economic activity generated by Plum Creek's forest management activities in the area. For instance, Scott Hersey, manager of Greenville Steam Company, a biomass-fired power generating facility that employs 25 people, testified that his company relies on the wood byproducts from timber

³⁸ Tr. Dec. 3, 2007, pp. 12-13. No record evidence exists as to the number of people Plum Creek directly and indirectly employs for its timber harvesting operations solely in the affected area.

³⁹ MILLS: Lumbert and Brochu, Aug. 31, 2007 filing.

⁴⁰ MILLS: Lumbert, Aug. 31, 2007 filing, p. 2.

harvesting in the area for a “continued supply of necessary raw material” to produce and sell renewable electricity.⁴¹

These existing forest and other natural resources, and the commercial forestry use that takes place as a result, exemplify on a vast landscape scale two of the four principal values of the jurisdiction: “the economic value of the jurisdiction for fiber production ... particularly the tradition of a working forest, largely on private lands,” and the value of the jurisdiction for “diverse, abundant and unique high-value natural resources and features.”⁴² The Commission therefore finds that protecting these existing forest and other natural resources, and further protecting the ability to continue commercial forestry in the area, to be of utmost importance to the people of the State of Maine.

(2) **Existing Recreational And Scenic Resources, And Existing Outdoor Recreational Uses**

The area is comprised of a unique combination of natural resources dotting a working forest. It is this unique combination of natural resources, in particular its mountains and waters, that defines the area’s recreational and scenic setting.

The Plan Area itself is set among a group of visually prominent mountains, with elevations from approximately 1,700 to 3,500 feet, which help define the Moosehead Lake region. These include Baker, Lily Bay, Number Four, Elephant, Bluff, Shaw and Prong Mountains within the Plan Area and Big Spencer, Big Moose and Little Spencer Mountains adjoining the Plan Area. The most notable landform is Mount Kineo, which appears as a sentinel bluff in the central basin of Moosehead Lake. These mountains add visual interest to the Plan Area and are important elements defining the scenic quality of the region. The lakes and rivers in the area are also an important contributor to the scenic and recreational resource quality of the area. The Plan Area includes all or portions of 76 lakes and ponds that have a variety of unique aesthetic qualities, including visually appealing islands, bays and coves, and wetlands. The predominant rivers are the East and West Outlets of the Kennebec River, Moose River and Roach River. The scenic character of the shoreline of these lakes and rivers varies with geographic, topographic and ecologic conditions. Contributing to the scenic quality of the waters in the area is the lack of visible development along long stretches of shorelines.⁴³

Recreational uses within the area comprise both primitive and motorized outdoor pursuits, including fishing, hunting, camping, wildlife and bird watching, hiking, paddling, boating, whitewater rafting, alpine skiing, cross-country skiing and snowshoeing, dog-sledding, snowmobiling and all-terrain vehicle (“ATV”) riding.⁴⁴ Many of these recreational opportunities have been attracting visitors to the Moosehead

⁴¹ PCEDC: Hersey, Aug. 31, 2007 filing, p.1.

⁴² CLUP, 1997, p. 114.

⁴³ Plum Creek: Allen, Aug. 31, 2007 filing, pp. 9-14.

⁴⁴ Plum Creek: Daigle, Aug. 31, 2007 filing; and Petition, Oct. 27, 2007, Petition for Rezoning, Tab 9a, p. 1.

Lake region for over 100 years.⁴⁵

In order to recreate in the area, recreationists depend, to varying degrees, on both the natural landscape and the recreational infrastructure that is located on privately-owned land in the area and on public land adjoining the area.

The Plan Area itself contains a range of recreational landscape settings from semi-primitive (i.e., limited access, no recreation infrastructure, and away from permanent settlements)⁴⁶ to developed areas (i.e., easy access by roads, recreation infrastructure, and close to permanent settlements). Nearby parcels that are publicly owned or protected by conservation easements include several Maine Public Reserved Lands (including the Little Moose Mountain, Nahmakanta, Seboomook, and Days Academy Grant Units), Lily Bay State Park, lands covered by FERC-licensed conservation easements on Indian Pond, Brassua Lake and Moosehead Lake, the Roach River conservation easement, and the Moosehead Lake conservation easement along segments of the east shore.

While existing recreational infrastructure within the area and immediately adjacent to it is limited in light of the expansiveness of the region, it includes motorized and non-motorized recreational trails (e.g., the ITS snowmobile trail system, ATV trails, several hiking trails including the Appalachian Trail and the B-52 crash site trail on Number Four Mountain); paddling and rafting routes (e.g., the Northern Forest Canoe Trail, the Roach River canoe route and rafting routes on the Kennebec River); boat launches and marinas (e.g., trailered boat launches on the shores of Brassua Lake, Indian Pond, and Moosehead Lake in Rockwood Strip Township; hand-carry boat launches on Cold Stream, Demo, and Hedgehog Ponds; and several marinas on Moosehead Lake); skiing facilities and golf courses (e.g., Big Squaw Mountain, groomed cross-country trails at the Sky Lodge and the Birches Resort, Squaw Mountain Village golf course, Mount Kineo golf course, and Moose River golf course); campsites and campgrounds (e.g., primitive campsites along the East and West Outlets of the Kennebec River, and the Lily Bay State Park campground); and a range of overnight lodging facilities (e.g., commercial sporting camps; hotels, motels and bed and breakfasts).

Many of the recreational resources and infrastructure in the area are accessible and usable by recreationists because of Plum Creek's voluntary "open lands" policy, whereby Plum Creek allows free public access to land in its ownership for many types of outdoor recreational uses.⁴⁷ Notwithstanding this policy, there are recreational resources in the area that are remote or difficult to access, including remote ponds, high mountain areas, and vast tracts of forested, undeveloped lands.

⁴⁵ Petition, Oct. 27, 2007, Petition for Rezoning, Tab 8.

⁴⁶ Places within the Plan Area that are generally characterized as semi-primitive include (i) ten Management Class 6 waters (remote ponds) currently within the Plan Area (Beaver, Bluff, Chase Stream, Cranberry, Dipper, Fogg, Mountain, Notch, Fourth Roach and Secret Ponds), most having significant cold water fisheries ratings, and significant or outstanding scenic quality, physical resource, and cultural resources ratings; (ii) Mountain Protection (P-MA) Subdistricts which are located above 2,700 feet elevation and include Number Four, Lily Bay, Baker, and Moose Mountains; and (iii) islands such as Sugar Island in Moosehead Lake.

⁴⁷ Petition, Oct. 26, 2007, Petition for Rezoning, Tab 8, p. 4.; Tr. Dec. 3, 2007, p. 13.

Although a misperception exists among some that the area is comprised of pristine forestland or is a wilderness area, there is no disagreement that the area is greatly valued for its distinct and outstanding scenic character.⁴⁸ The Commission agrees with Plum Creek witness John Daigle that, in reviewing the “comprehensive inventory of natural features defining the landscape within the Concept Plan area...one is struck by the amount and diversity of natural features...”⁴⁹ The Commission also finds that the CLUP description of the recreational resources in the jurisdiction as a whole is equally accurate in describing the area, namely that it offers “exceptional recreational opportunities for Maine residents and visitors alike,” that these “opportunities are created by the presence of recreational resources that are unparalleled in the Eastern United States in terms of abundance, diversity, and uniqueness,” and that “it is the area’s remoteness and lack of development that sets it apart...For many users, these remote, undeveloped qualities not only enhance, but essentially define, their recreational experience, distinguishing it from excursions in more populous areas.”⁵⁰ Many witnesses and members of the public who appeared before the Commission confirmed this conclusion.

These recreational and scenic resources, and outdoor recreational uses that take place as a result, exemplify on a vast landscape scale the other two principal values of the jurisdiction: the “diverse and abundant recreational opportunities, particularly for primitive pursuits...” and the “natural character values” of the jurisdiction, “which include the uniqueness of a vast forested area that is largely undeveloped and remote from population centers.”⁵¹ The Commission therefore finds that protecting these existing recreational and scenic resources, and further protecting the outdoor recreational uses that occur due to their existence, to be of utmost importance to the people of the State of Maine.

⁴⁸ E.g.:

- “Maine’s North Woods is a highly scenic region of forest, mountains, lakes and ponds, abundant wildlife and many outdoor recreational opportunities. The North Woods is valued by generations of Mainers for its unique aesthetic character and outstanding visual quality.” (Plum Creek: Allen, Aug. 31, 2007 filing, p. 9.)
- “The most signature characteristic of the Moosehead Lake region is its scenic beauty. The tourism industry in the region is dependent on people coming from all over the state, the country, and the world to see this beautiful region. People come for many different reasons: to hunt, fish, hike, boat, watch wildlife, snowmobile, ski, relax, or simply enjoy being in the area, but the scenic beauty of the area is core to the quality of the experience of all of these users.” (MA-NRCM: Dec. 19, 2008 filing, p. 1.)
- “What you have in the Moosehead lake region is a national treasure, and there are far too few places like it left on the east coast.” (Public Comment: Erik J. Carlson, Dec. 1, 2007.)
- “Our family has owned summer property in Maine for over 50 years; since 2001 we have been year-round residents of Maine. What brought us here? The answer is obvious to anyone who has any knowledge and experience of this state: the incomparable beauty of its landscapes – along the coast, in the mountains and deep woods – and its pristine, unspoiled lakes.” (Public Comment: Bette and Jeffrey Roberts, Dec. 1, 2007.)

⁴⁹ Plum Creek: Daigle, Aug. 31, 2007 filing, p. 12.

⁵⁰ CLUP, 1997, pp. 59-60.

⁵¹ CLUP, 1997, p. 114.

B. The Proposed Land Use District Is Consistent With The Comprehensive Land Use Plan And The Purpose, Intent And Provisions Of Ch. 206-A (12 M.R.S.A. § 685-A(8-A))

The purpose of the law establishing the Land Use Regulation Commission is to extend the principles of sound planning, zoning, and subdivision control to its jurisdiction in order to provide for appropriate – and prevent inappropriate – residential, recreational, commercial and industrial uses, prevent the despoliation of the jurisdiction’s waters, and preserve ecological and natural values. The law details the duties, powers, procedures, and standards under which the Commission operates. The principles of “sound planning, zoning, and subdivision control” and the detailed policies by which it will achieve the purpose and intent of the law are embodied in the CLUP that the statute requires the Commission to adopt. The last revision to the CLUP was in 1997, and this is the version against which consistency of the Concept Plan is evaluated.

In evaluating the Concept Plan’s consistency with the CLUP and Ch. 206-A, the Commission finds of particular relevance the statutory purpose and scope; the statutory criteria for adoption or amendment of land use standards; the broad goals of the CLUP; the principal values of the jurisdiction identified in the CLUP; the challenge that the CLUP identifies in “areas with special planning needs,” which includes the Moosehead Lake region; and a number of CLUP goals and policies with respect to development, natural resources, and cooperative efforts with landowners. The Commissions findings with respect to these provisions are set forth below.

(1) **The Concept Plan Is Consistent With The Purpose, Intent And Provisions Of Ch. 206-A**

The purpose and scope of 12 M.R.S.A. Ch. 206-A are embodied virtually verbatim in the broad goals of the CLUP, and the Commission therefore considers consistency with the CLUP to also establish consistency with the purpose and scope of the statute under which the CLUP must be adopted.⁵²

(2) **The Concept Plan Is Consistent With The Criteria For Amendment Of Land Use Standards**

Pursuant to § 685-A(8-B) of the statute, the Commission evaluated the Concept Plan’s amended land use standards⁵³ to assure that they “serve the purpose, intent, and provisions of [Ch. 206-A]” and are consistent with the CLUP. These include a number of standards that are either new or have been modified from its current form in Ch. 10. For example:

⁵² See paragraph 9.B.(3).

⁵³ See Concept Plan, Sep. 23, 2009, Sec. II.

- Standards to ensure that scenic character in the area is protected have been expanded to specifically address hillside development in order to implement the CLUP's policy to "protect the scenic values of coastal, shoreland, mountain, recreation and other scenic areas."⁵⁴
- Existing Ch. 10 standards for the layout and design of subdivisions have been modified to address the need identified in the CLUP to provide more specific guidance for subdivision proposals and to promote designs that preserve open space and retain natural features.⁵⁵
- Similarly, exterior lighting standards, certain dimensional standards, and subdivision and land transfer standards have been strengthened consistent with the goals and policies of the CLUP.⁵⁶

Consistent with the CLUP's provisions governing concept plans and their binding effect on both the Commission and the landowner,⁵⁷ which provisions are expressly incorporated into the Concept Plan, the Commission may not during the thirty-year term of the Concept Plan modify certain identified regulatory standards and procedures set forth therein except upon agreement with Plum Creek. The Concept Plan explicitly distinguishes between those provisions which are subject to unilateral amendment by the Commission, and those which may only be amended during its thirty-year term upon agreement between the Commission and Plum Creek.⁵⁸ It is important to note, however, that the Concept Plan's terms expressly respect the Legislature's undiminished authority to enact statutory changes applicable to the Plan Area.⁵⁹

(3) **The Concept Plan Is Consistent With The Broad Goals Of The CLUP And The Specific Natural Resources Goals And Policies Of The CLUP, And Protects The Jurisdiction's Principal Values**

The CLUP sets forth three broad goals that speak to the purpose and intent of the Commission's statute, with the intent that its policies be directed toward achieving them:

1. Support and promote the management of all the resources, based on the principles of sound planning and multiple use, to enhance the living and working conditions of the people of Maine, to ensure the separation of incompatible uses, and to ensure the continued availability of outstanding quality water, air, forest, wildlife and other natural resource values of the jurisdiction.

⁵⁴ CLUP, 1997, p. 140; *see* Concept Plan, Sep. 23, 2009, Sec. II, Sub-Ch. III, 10.25,E,1; *see also* paragraph 9.E.(1).

⁵⁵ CLUP, 1997, p. 149; *see* Concept Plan, Sep. 23, 2009, Sec. II, Sub-Ch. III, 10.25,Q,3.

⁵⁶ *See* Concept Plan, Sep. 23, 2009, Sec. II, Sub-Ch. III, 10.25,F; 10.25,Q,1; 10.26; and 10.27.

⁵⁷ CLUP, 1997, p. C7; *see also* Ch. 10.23,H,1.

⁵⁸ *See* Concept Plan, Sep. 23, 2009, Sec. II, Sub-Ch. II, A - B.

⁵⁹ *See* Concept Plan, Sep. 23, 2009, Sec. II.A, fn. 1; *see also* Tr. Jan. 24, 2008, pp. 128-129 (testimony of Plum Creek attorneys that Plum Creek assumes the risk of such legislative changes).

2. Conserve, protect and enhance the natural resources of the jurisdiction primarily for fiber and food production, nonintensive outdoor recreation and fisheries and wildlife habitat.
3. Maintain the natural character of certain areas within the jurisdiction having significant natural values and primitive recreation opportunities.⁶⁰

These broad goals are echoed in the CLUP's articulation of the four "principal values that make the jurisdiction so special." These are:

- The economic value of the jurisdiction for fiber and food production, particularly the tradition of a working forest, largely on private lands. This value is based primarily on maintenance of the forest resource and the economic health of the forest products industry.
- Diverse and abundant recreational opportunities, particularly for primitive pursuits.
- Diverse, abundant and unique high-value natural resources and features, including lakes, rivers and other water resources, fish and wildlife resources, ecological values, scenic and cultural resources, coastal islands, and mountain areas and other geologic resources.
- Natural character values, which include the uniqueness of a vast forested area that is largely undeveloped and remote from population centers.⁶¹

The CLUP also sets forth specific natural resources goals and policies that are particularly aimed at preserving these four principal values. These goals and policies address a wide variety of natural resource domains. Of particular relevance to the Commission's evaluation of the Concept Plan are policies relating to forest resources, recreational resources, scenic resources, special natural areas, water resources, wetland resources, and wildlife and fisheries resources.⁶² In reaching its conclusion with respect to the Concept Plan's consistency with the CLUP, the Commission evaluated the Concept Plan against these and other specific natural resources goals and policies.

Throughout the proceeding, a number of parties argued that the Concept Plan is consistent with the CLUP and provides for the management of orderly development that is needed to protect the jurisdiction's principal values. For example, MSCC witness Robert Sanford stated that the "North Woods is not a pristine wilderness; it is human-influenced, has been for centuries, and requires management. Development in a comprehensive, orderly fashion as articulated in the new concept plan provides a means for that management."⁶³

⁶⁰ CLUP, 1997, p. 134.

⁶¹ CLUP, 1997 p. 114.

⁶² See CLUP, 1997, pp. 135-140 for the full statements of natural resource policies.

⁶³ MSCC: Sanford, Aug. 31, 2007 filing, p. 11.

However, several parties asserted that 2,025 units (or 2,300 units, which includes an assumed number of employee housing units and affordable housing units) will exceed the capacity of the Plan Area and Moosehead Lake region when considering their cumulative impact on the principal values, including the region's natural character and remoteness, its wildlife, and its recreational opportunities. For example, MA-NRCM stated that "...the Commission has lost sight of the core values of the jurisdiction – those values...which define the jurisdiction, which make it unique – and has applied planning principles more appropriate to what would be expected in southern Maine....There is no demonstrated need for building what amounts to 2-3 new towns north of Greenville."⁶⁴ FEN-RESTORE argued that the cumulative impact of all the development as a whole as actually laid out should be considered. "In other words, even if the full 400,000 acres could absorb 2,000 units, it does not follow that placing the resorts and units at Lily Bay, Big Moose Mountain, Moose Bay, Long Pond and Brassua would not create undue cumulative impacts when analyzed together... [W]e are left with a massive development that sprawls on both sides of Moosehead Lake up past Rockwood to Long Pond on the west and into Lily Bay and Upper Wilson Pond on the east."⁶⁵

Cumulative impacts, as these parties suggest, need to be judged against the Commission's four principal values, and the Commission conducted such an evaluation. In sum:

- With respect to the economic value of the jurisdiction for fiber and food production, the record evidence is strong that the cumulative effect of the Concept Plan, including its proposed development and its conservation, will not materially diminish capacity for forestry but rather will provide for its long-term security.⁶⁶
- With respect to diverse and abundant recreational opportunities, particularly for primitive pursuits, the record contains competing arguments on the cumulative impact of the Concept Plan on primitive recreational uses.⁶⁷ Commission consultant Mark Anderson set forth the elements of the Concept Plan that he believed would be required to diversify recreational opportunities and achieve a net cumulative benefit to recreational opportunities, including primitive pursuits.⁶⁸ The Concept Plan makes provision for each of these elements, including conservation easements on all of the land outside of the development areas with guaranteed public access, construction of hiking trails, resort development that includes recreational amenities, and other resources to serve additional demand as it develops.⁶⁹

⁶⁴ MA-NRCM: Jul. 11, 2008 filing, pp. 25-31.

⁶⁵ FEN-RESTORE: Jul. 11, 2008 filing, pp. 16-19; NFN: Jul. 11, 2008 filing, p. 8; and MWGO: Jul. 11, 2008 filing p. 1.

⁶⁶ See paragraphs 9.C.(3) and 9.C.(4).

⁶⁷ See, e.g., LURC: Staff and Consultants, Sep. 16, 2008, Notebook 2, pp. 12.10 – 12.11.

⁶⁸ LURC: Anderson, Aug. 31, 2007, Review of Report by Dr. John Daigle, pp. 2-26.

⁶⁹ See paragraphs 9.C.(3), 9.C.(6) and 9.E.(1).

- With respect to diverse, abundant and unique high-value natural resources and features, the Commission’s evaluation of cumulative impact adhered to an avoidance-minimization-mitigation approach. This resulted in, for example, the elimination of development from known high-value natural resources areas, the expansion of conservation easement lands and inclusion of protective terms that explicitly take into account critical wildlife and other Conservation Values, the adoption of a management plan to address potential traffic impacts on Canada lynx, and the establishment of review processes that require attention to natural resources that are otherwise difficult to protect at site-specific subdivision or development review phases.⁷⁰

- With respect to natural character values, including remoteness, the record evidence indicates that no remote areas within the Plan Area will be developed and all such areas are permanently protected from development. However some resources close to development areas, even if not literally “remote” (*e.g.*, the northern portion of Indian Pond), have remote qualities that are of value for primitive recreation and that those qualities may be affected by the development contemplated under the Concept Plan. With respect to these undeveloped, yet accessible areas, the record shows that (i) the larger region offers many suitable locations for those in search of remoteness, (ii) many of these “refugia” for both primitive and traditional recreational uses are located in the Plan Area or the Roaches Ponds Tract and will be permanently protected and accessible to the public, and (iii) activity emanating from development areas will be dispersed to multiple destinations across a vast conserved landscape, thereby significantly diminishing the likelihood of impact on any one destination.⁷¹

(4) **The Concept Plan Addresses The Challenges Of An Area With Special Planning Needs And Is Consistent With The CLUP Policy Regarding Cooperative Initiatives**

The CLUP recognizes the particular challenge of areas with special planning needs,⁷² which are places that “possess high-value natural resources that are potentially threatened by continued high rates of growth.” The Moosehead Lake region is among the high priority areas with special planning needs identified in the CLUP:

Balancing development and conservation in these areas is the key to maintaining their high values, particularly their recreational appeal. A more specialized and localized planning and zoning approach [*i.e.*, prospective zoning] is appropriate in these instances...⁷³

⁷⁰ See paragraphs 9.C.(5) and 9.E.(2).

⁷¹ See paragraphs 9.B.(8) and 9.E.(1).

⁷² CLUP, 1997, pp. 110-111.

⁷³ CLUP, 1997, pp. 113, 126-128.

The CLUP also encourages concept plans, a landowner-initiated form of long-range planning: “The goal of concept planning is to encourage long-range planning based on resource characteristics and suitability as an alternative to haphazard, incremental development.”⁷⁴ Thus, based on the CLUP and the record evidence, the Commission finds the Moosehead Lake region to be an area with special planning needs where the objective is to maintain its high-value resources through a balance of development and conservation.

As noted, the CLUP encourages a regional plan and prospective zoning for this region, but before the Commission initiated such a process, Plum Creek submitted its Concept Plan proposal covering nearly 400,000 acres and much of the region’s lake shores. The Commission finds that concept planning at this scale is a suitable means for achieving the long-range planning and balance between development and conservation called for by the CLUP for the Moosehead Lake region, and one specifically encouraged by the CLUP. Specifically, the CLUP recognizes the importance of landowner initiatives and cooperative efforts that further the Commission’s objectives of protecting natural resources and guiding growth through non-regulatory or voluntary actions. This includes providing “alternatives to traditional regulatory approaches, such as resource and concept plans,” and encouraging landowners to take advantage of these opportunities.⁷⁵

As detailed in paragraph 7.A., during the month prior to Plum Creek’s original submission of Zoning Petition ZP 707, a number of persons requested that the Commission impose a moratorium on all proposed amendments to current zoning in the region so that it could initiate its own regional planning process. The Commission denied the petition for a moratorium, finding that its statute, CLUP and regulations are adequate to control the types of development identified in the petition. This was based in part on a finding that the Concept Plan would need to recognize and conform to the CLUP’s designation of the Moosehead Lake region as an area with special planning needs.

In its decision not to enact a moratorium, the Commission nevertheless initiated a public process that is in many respects characteristic of a prospective zoning process. As noted by MA-NRCM, “The Commission’s process here is essentially that of prospective zoning. The size and scope of this Concept Plan, and the exercise of deciding where and why to rezone areas around the lake for development, are akin to a regional planning process.”⁷⁶ In the moratorium decision, the Commission committed to seeking and considering public comment on the Concept Plan. As set forth in paragraph 7, the Commission, as well as its staff and consultants, provided numerous opportunities for members of the public to provide testimony and comment on the Concept Plan, including hosting a series of issues scoping sessions attended by nearly 1,000 people, holding four full days of public hearings, and providing multiple opportunities to critique the Concept Plan thereafter. The comments strongly influenced Plum Creek’s multiple Concept Plan revisions and the Commission’s Concept Plan amendments, resulting in two permanent

⁷⁴ CLUP, 1997, pp. C5 – C7.

⁷⁵ CLUP, 1997, p. 143.

⁷⁶ MA-NRCM, Jul. 11, 2008 filing, p. 7; *see also* Plum Creek: Daniels, Aug. 31, 2007 filing, pp. 27-28 (“The Concept Plan, is, in effect, a prospective zoning plan....”).

conservation easements of vastly expanded scope and level of protection, less lakeshore development, and the relocation of development from a number of originally proposed “development envelopes,” including from outlying ponds and more remote sections of the larger lakes, to more appropriate areas closer to existing development.⁷⁷

(5) **The Plan Area Can Accommodate The Amount Of Development Contemplated In The Concept Plan**

While the CLUP is less concerned with the total amount of expected development in the jurisdiction because it anticipates that this development can be absorbed,⁷⁸ this conclusion is based on analyses of historic development rates. There is no obligation for the maximum amount of development proposed in the Concept Plan to be built out within the thirty-year timeframe of the plan, or at all. However, if it were to proceed at this pace, it may accelerate the rate of development beyond that assumed in the CLUP.⁷⁹ Consequently, the Commission evaluated the Concept Plan (including, for example, the cumulative impacts on community services, recreational uses and facilities, wildlife, traffic volume and transportation infrastructure, and other capacity measures) based on the assumption that contemplated development will reach build-out in 30 years or sooner.

The total number of units (including both dwelling units and overnight accommodation units, but excluding affordable housing, caretaker housing, and employee housing at resorts) is restricted to 2,025 for the thirty-year term of the Concept Plan. Except for specified amounts of land within the Main Rockwood/Blue Ridge development sub-area and the Brassua Lake South Peninsula development sub-area, this may also effectively be the cap on new development in the Plan Area in perpetuity because development boundaries will be permanently fixed by the surrounding conservation easement. Further, in certain development areas, development rights in excess of the thirty-year restrictions for those areas are extinguished.⁸⁰

Whether this total number of units can be accommodated depends on the capacities of many systems, both natural and man-made. Findings concerning impacts to these systems – the natural topographic, lake, and vegetative systems that produce the region’s scenic character; the ecological systems that support wildlife and plant resources; the recreational systems for primitive and non-primitive outdoor pursuits; the soils systems for wastewater management, storm water management, and erosion control; and the

⁷⁷ E.g., Petition, Apr. 27, 2006, Letter of Transmittal; and Plum Creek: Mar. 7, 2008, filing, pp. 9-10. See also paragraphs 7.A.(3), 7.B.(2), 7.C.(2), 7.D.(10), and 7.F.(22) for a summary of the key changes to the development, conservation and additional plan elements of the Concept Plan since April 2005.

⁷⁸ “The Commission has concluded that the principal development issue is not the amount of development taking place in the jurisdiction, but rather where it is located.” (CLUP, 1997, p. 125; see also p. 115).

⁷⁹ The CLUP assumed that 2,500 to 3,000 new dwelling units and 500 new non-residential facilities would be constructed in the jurisdiction over 10 years. (CLUP, 1997, p. 115.) Extrapolated to 30 years, this pace would result in approximately 7,500 to 9,000 new dwelling units and 1,500 non-residential facilities jurisdiction-wide. In comparison, the Concept Plan, which covers approximately four percent of the jurisdiction, provides for a maximum of 2,025 units (both residential dwelling units and overnight accommodation units) over 30 years, plus non-residential facilities in specified areas.

⁸⁰ Concept Plan: Sep. 23, 2009, Appendix B.

community systems for a variety of municipal and State services – are set forth in paragraph 9.E. Consistent with the findings in paragraph 9.E. and with the general, jurisdiction-wide outlook of the CLUP,⁸¹ the Commission finds that, with the appropriate placement of development areas, the appropriate location of development within those areas, and the rigorous land use standards and processes to protect existing resources and uses, as set forth in the Concept Plan, the Plan Area can accommodate this maximum level of development.

(6) **The Concept Plan Is Consistent With The CLUP Goals And Policies Regarding The Location Of Development**

According to the CLUP’s jurisdiction-wide assessment, projected levels of development can occur in the jurisdiction without compromising the jurisdiction’s values if it occurs “in appropriate locations and in a compact development pattern.”⁸² Overall, the CLUP seeks to reinforce

[t]he historical pattern of development in which most new development occurs where principal values are least impacted... Ideally, a high percentage of new development should be located in those areas identified by the Commission as most appropriate for new development. New economic development should be facilitated by prospective zoning, and a streamlined review process should exist for projects in identified growth areas. Housing needs – for year-round residents, retirees, seasonal residents, and recreational users – should be accommodated, but without compromising the jurisdiction’s principal values....In fringe areas with high natural resource values [specifically including the Moosehead Lake region], special efforts should be made to balance development and conservation concerns.⁸³

Development policies to implement this envisioned pattern of development include, by way of example:⁸⁴

- Discouraging growth that results in scattered and sprawling development patterns;
- Guiding development to areas near existing towns or communities and in other areas identified as appropriate development centers;
- Undertaking prospective zoning for development, particularly where there is a need to achieve balance between expected development pressures and high resource values;
- Allowing well planned development in areas appropriate as new development centers;

⁸¹ CLUP, 1997, p. 115.

⁸² CLUP, 1997, p. 115.

⁸³ CLUP, 1997, pp. 133-134.

⁸⁴ See CLUP, 1997, pp. 140-142 for the full statements of development policies.

- Allowing for development subject to concept plan review;
- Encouraging forest and recreation industries that further the tradition of multiple use without diminishing its principal values; and
- Encouraging site designs that have a minimal impact on the principal values of the jurisdiction; and establishing appropriate guidelines for development to prevent adverse impact to the principal values of the jurisdiction.

The Commission's adjacency criterion⁸⁵ is a primary tool used to direct the location of development in the jurisdiction consistent with these development goals and policies. It states that new development should be located near existing, compatible development. The Commission has generally interpreted the adjacency criterion to mean that most rezoning for development should be located no more than one mile by road from existing development of similar type, use, occupancy, scale and intensity to that being proposed. The Commission will waive the adjacency criterion for development proposals on the shores of Management Class 3 lakes if the lake does not have existing or potential water quality problems and soils are suitable for development.⁸⁶ The Commission also may waive adjacency in concept plans provided that any development gained through a waiver is matched by comparable conservation measures.⁸⁷

While the Commission gives due consideration to adjacency in its evaluation of the Concept Plan (particularly with respect to how it implicates certain conservation requirements⁸⁸), given that adjacency may be waived, it also applies a more comprehensive, multi-layered evaluation to determine whether development areas are appropriately located. This multi-layered evaluation of the Concept Plan development – first at the landscape/regional scale, and then at the progressively finer resource/township and site scales – is consistent with the arrangement of the CLUP development policies and recognizes that protection of the CLUP's principal values requires attention at each of these scales. Based on this evaluation, which is set forth below, the Commission concludes that the Concept Plan is consistent with the CLUP goals and policies regarding the location of development.

(a) *Development Is Appropriately Located At The Landscape/Regional Scale*

At the landscape level, development is restricted to the southern portion of the Plan Area, below a line that runs roughly through Long Pond, Brassua Lake, and the middle "room" of Moosehead Lake. Most of the development areas are arrayed along Route 6/15 and Lily Bay Road corridors, with access to these public roads, the electrical power grid, and the service hubs of Greenville, Jackman and Rockwood.⁸⁹ The Big Moose Mountain development area is located next to an

⁸⁵ CLUP, 1997, pp. 122, 141.

⁸⁶ CLUP, 1997, p. C7.

⁸⁷ Ch. 10.23,H,6,d.

⁸⁸ See paragraph 9.F.(3).

⁸⁹ The most distant development areas are 11-15 miles from one of these centers. (Plum Creek: Shrum, Aug; 31, 2007 filing, p. 104.)

existing alpine ski center, accessible from Route 6/15, and about fourteen miles from Greenville. Conversely, large contiguous forested areas distant from existing development and services are placed in permanent conservation easements. These areas include Plum Creek's entire holdings in remote or interior townships such as Thorndike, Brassua, Soldiertown, West Middlesex Canal Grant, Big W, Day's Academy Grant, Spencer Bay, Squaretown, T1 R13 WELS, Chase Stream, Misery, and, in the Roaches Ponds Tract, Shawtown, Bowdoin College Grant East, and T1 R12 WELS.

Thus, development areas are located away from all remote areas of the Moosehead Lake region and conservation lands encompass all of these remote areas within Plum Creek's ownership. Importantly, these conservation easement lands are contiguous with, fully envelop, and permanently define the boundaries of each of the ten development areas, a hallmark of sound landscape-level planning. The Commission agrees with Plum Creek's expert witness Thomas Daniels, who asserted that the conservation easements are strategically located to contain appropriately placed development.⁹⁰

(b) *Development Is Appropriately Located At The Resource/Township Scale*

After restricting development areas to those townships, water bodies and upland areas that are not remote, the development areas along these lakes or within the selected upland areas or townships are further confined to avoid and otherwise minimize impacts to existing resources and uses. For example, although all of Brassua Lake is a Management Class 3 lake and thus considered potentially suitable for development, the Concept Plan limits development to the southern "room" of the lake and permanently protects the undeveloped, western "room" known as Little Brassua Lake.

In each case, development areas are located along limited segments of the selected lakes' shorelines or, for the majority of proposed development, set away from lakes in limited upland or hillside areas. The development areas tend to be extensions of existing areas of development, located on "rooms" of lakes that already are characterized by established levels of development, and/or proximate to developed infrastructure and services.

(c) *Development Is Appropriately Located At The Site Scale*

Finally, at the site level, the Concept Plan specifies existing and enhanced standards that assure development is well-planned and designed to use land efficiently and avoid impacts to existing resources and uses.⁹¹

⁹⁰ Plum Creek: Daniels, Aug. 31, 2007 filing, pp. 25-26.

⁹¹ See, e.g., Concept Plan: Sep. 23, 2009, Sec. II, Sub-Ch. III, 10.25,E,1 (Scenic Character) and 10.25,Q,3 (Layout and Design for All Subdivisions), and Sub-Ch. IV, 10.29 (Long-term Development Plans).

(7) **The Development Areas, Individually And As A Whole, Are Consistent With The CLUP**

In evaluating whether the Concept Plan is consistent with the CLUP, particularly in light of the goals and policies regarding the location of development, the Commission not only evaluated the development areas as a whole, as discussed above, but also assessed the location, type and scale of contemplated development within each development area and sub-area individually and considered the range of area-specific issues raised by parties and members of the public.

Certain issues presented by the Lily Bay, Rockwood/Blue Ridge and Brassua Lake development areas are discussed in paragraphs (8) and (9), below.

Additional information regarding these and the other development areas, including the Commission's amendments to the location, type and scale of development within most of these areas, are contained in the administrative record.⁹²

(8) **The Lily Bay Development Area Is Consistent With The CLUP**

Of the development-related issues presented by this Concept Plan, none elicited more interest than the development proposed for the Lily Bay peninsula. A number of parties and many members of the public opposed some or all development in Lily Bay Township on grounds that it will, *inter alia*, compromise the natural character of this township.⁹³ This concern goes directly to the issue of the Concept Plan's consistency with the CLUP, in particular the principal value of "natural character," meaning "the uniqueness of a vast forested area that is largely undeveloped and remote from population centers."⁹⁴ For example:

- The Commission received more than 1,700 letters and e-mail communications, approximately 1,500 of which expressed concern about development at Lily Bay, during the public comment period from June 11, 2008 to July 11, 2008, which were filed after the Commission's June 4, 2008 preliminary determinations regarding the core elements of Plum Creek's 2007 Concept Plan proposal. Many of these comments, as well as other public concerns expressed throughout the proceeding, raised questions regarding the Lily Bay development's consistency with the CLUP, particularly with regard to the natural character of Lily Bay (both the water body and the township) and assertions that the development would violate the "wilderness" and "remoteness" of the Lily Bay area.

⁹² See, e.g., LURC: Oct. 1, 2008, Amendments to Core Elements of Plum Creek's Concept Plan Proposal Generated by the Land Use Regulation Commission At Its September 23-24 Deliberative Sessions.

⁹³ Members of the public and parties also opposed some or all development at Lily Bay on the grounds that there is no demonstrated need for this development and that the development will have undue adverse impacts on existing uses and resources, particularly on (1) Canada lynx, (2) vernal pools, (3) outdoor recreational uses, (4) Lily Bay State Park, and (5) Greenville's local economy and services. The facts and analysis presented to illustrate some of the specific considerations that lead the Commission to conclude that the Lily Bay development area will cause no undue adverse impacts to these and other existing uses and resources are addressed in paragraph 9.E., below. Demonstrated need is discussed at paragraph 9.D., below.

⁹⁴ CLUP, 1997, p. 114.

- MA-NRCM commented that “the rezoning on Lily Bay violates the jurisdiction’s principal value that guided growth and development not destroy the natural character of the region,” and that the rezoning would result in the “equivalent of a new town...to be constructed proximate to, and in, the habitat of a Federally-listed threatened species, the Canada lynx. The record falls far short of any such planning concept even remotely falling in alignment with this Commission’s Comprehensive Land Use Plan, which identifies the protection of the natural character of the region and unique wildlife resources as the primary principles guiding decisions on rezoning and growth-planning.” Conservation measures, MA-NRCM said, cannot be used to justify “the new Lily Bay resort and subdivision town” because, before the benefit of conservation can be considered, the Commission must first determine that the development is appropriate.⁹⁵
- FEN-RESTORE asserted that a “calculated decision” was made “to sacrifice Lily Bay in order to justify requiring the [Moosehead Legacy Conservation Easement] and the purchase of the Roaches.”⁹⁶
- MWGO asserted that Lily Bay should be “off limits to development,” especially in light of the State’s investment of public funds to provide Mainers a place for primitive pursuits – “i.e., Lily Bay State Park and conservation easements on the eastern shoreline of Moosehead. The planned development is, in our opinion, a violation of the current CLUP standards.”⁹⁷
- Other organizations, including AMC and GROWSMART, argued for limiting development at Lily Bay to a small-scale, nature-based resort, while MRFC argued for eliminating the resort component and allowing only limited residential development.⁹⁸

As certain parties contend, there is much about Lily Bay Township and the townships immediately surrounding it that is undeveloped and remote. However, for the reasons set forth below, the Commission finds that (i) the character of that limited portion of Lily Bay Township in which the Lily Bay development area is located is not remote, and (ii) with proper design, management, and permanent containment as is required pursuant to the provisions of the Concept Plan, development in this area will not unduly compromise the natural, undeveloped and in many instances remote character of the surrounding area.

(a) *Lily Bay Township Is An Accessible Township With Special Planning Needs*

Lily Bay Township is within a growing, high natural resource value area. Its profile is varied and includes an established and slowly expanding seasonal community along its southern shore fronting Lily Bay; a protected shoreline with a variety of primitive and managed lake-oriented recreational opportunities along

⁹⁵ MA-NRCM: Jul. 11, 2008 filing, pp 16-17, 24-25.

⁹⁶ FEN-RESTORE: Jul. 11, 2008 filing, pp. 19-22.

⁹⁷ MWGO: Jul. 11, 2008 filing, p. 1.

⁹⁸ AMC: Jul. 11, 2008 filing, pp. 2-5; GROWSMART: Jul. 11, 2008 filing, pp. 1-3; and MRFC: Jul. 11, 2008 filing, pp. 4-5.

its southwestern and western shores, including most of its frontage on Spencer Bay; a densely roaded but otherwise undeveloped working forest in the interior of the peninsula; a variety of important natural resources, including occurrences of wildlife species that are threatened and/or of special concern; and nearby recreational resources with non-intensive recreational facilities that accommodate both primitive and motorized uses, including Lily Bay State Park, Sugar Island, and the Roach River.

While there are portions of Lily Bay Township (especially along the shores of Spencer Bay and north of the Lily Bay peninsula's ridgeline) that have remote qualities, the Commission finds that the record in this proceeding – including its analysis of development patterns,⁹⁹ the CLUP's designation of Lily Bay Township as an area with special planning needs, past Commission action that designates Lily Bay as one of the limited number of minor civil divisions where Level 2 subdivisions are allowed, and the presence of electrical, public road, and solid waste management services – does not support the notion that Lily Bay Township as a whole is remote.

It is in this context – an accessible township with an established pattern of settlement that also harbors high-value natural, scenic, and recreational resources – that the Commission regards Lily Bay Township overall as an “area of special planning needs.” The CLUP's objective in this area is not to exclude development but to “allow growth to be accommodated in these areas without compromising the resources that make them so special.”¹⁰⁰

The following facts and analysis further support the Commission's conclusion that additional development as contemplated under the Concept Plan can be accommodated in Lily Bay Township without unduly compromising its natural character and its remote qualities:

(i) *Lily Bay Township Is Accessible*

The township is approximately twelve miles north of the service center of Greenville. It is located between the Town of Beaver Cove and the historical settlement of Kokadjo. Kokadjo, which is located seven miles north of the existing settlement at Lily Bay, also is at the head of First Roach Pond, which is developed with a substantial number of house lots on both its north and south shores. Lily Bay Road, a two-lane, public road classified by MaineDOT as a major collector, connects Lily Bay to Greenville, Beaver Cove, and Kokadjo. Kokadjo marks the terminus of Lily Bay Road and the transition to the private road system that serves the largely undeveloped interior north and east of Moosehead Lake.

⁹⁹ LURC: Nov. 5, 2007, A Comparison of Development Elements of Plum Creek's Moosehead Lake Region Concept Plan Proposal to the Commission's Adjacency Principle, pp. 6, 8.

¹⁰⁰ CLUP, 1997, p. 113.

(ii) *Significant Development Is Located In Lily Bay Township*

Lily Bay Township is developed with approximately 141 structures.¹⁰¹ These structures are mostly seasonal dwellings, ranging from primitive camps to new or renovated contemporary structures. Most are located along a three- to four-mile stretch of the township's southern shoreline.

Infrastructure for development is available along the Lily Bay Road up to Kokadjo; electrical power that runs to Kokadjo and serves development on First Roach Pond; a small county solid waste transfer facility in Lily Bay Township off Casey's Road; and municipal fire protection services provided by the Town of Greenville, with an estimated 22-minute response time to the developed portion of Lily Bay.¹⁰²

The Moosehead Lake shoreline in Lily Bay Township changes in character moving from east to west. The southern shore along Lily Bay hosts most of the township's development, including a developed cove, seasonal home development at Carleton Point, and a small third cluster off Casey's Road to the west. This shore is a mix of private ownership and State-held conservation easement. Moving to the western tip and northern shore along Spencer Bay, there are several campsites, a commercial sporting camp and private campground at Stevens Point, and very little other development. Most of this shoreline is protected from further development by a State-held conservation easement.

Approximately 30 percent of dwellings (43) were built between 1971 and 2005, making Lily Bay Township the 53rd most developed township out of the 459 minor civil divisions in LURC jurisdiction; the 20th most developed out of the minor civil divisions in Piscataquis and Somerset counties that are in LURC's jurisdiction; and the 6th most developed out of the minor civil divisions in the Plan Area.¹⁰³ The table below suggests that, at the township level, Lily Bay and Frenchtown Townships and communities immediately to the north represent a divide between the developing fringe and the undeveloped interior on the east side of Moosehead Lake, with Lily Bay part of the developed fringe.

¹⁰¹ This 2004 estimate represents the number of lots with structures valued at \$1,000 or more based on Maine Revenue Services taxation records. (Petition, Oct. 27, 2007, Tab 9b, p. 4.) If a lot contains only an accessory structure, it over-counts the number of dwellings. If a lot contains more than one dwelling unit, it under-counts the number of dwellings.

¹⁰² Plum Creek: Shrum, Aug. 31, 2007 filing, p. 104.

¹⁰³ LURC permitting records; *see also* LURC: Staff and Consultants, Sep. 16, 2008, Notebook 2, p. 5.19.

**Approximate New Dwelling Units in Concept Plan Area, East Side
of Moosehead Lake, by Township/Town (1971-2005)**

Beaver Cove	166
Elliotsville Twp	77
Frenchtown Twp	56
Lily Bay Twp	43
Days Academy Grant Twp	7
Bowdoin College Grant West Twp	4
Shawtown Twp	2
Spencer Bay Twp	1
T1 R13 WELS	1
Bowdoin College Grant East Twp	0

- (b) *The Existing Character Of The Lily Bay Development Area Itself Will Change; However, The Existing Character Is Not Remote*

The Commission finds that the location of the Lily Bay development area within Lily Bay Township is consistent with Commission policies for an area of special planning needs. Specifically:

- The Lily Bay development area is close to an existing pattern of development and the roads and utilities that serve it;
- Because of the conservation easements that envelope it, the Lily Bay development area has permanent “hard” boundaries, meaning its geographic size will never grow; and
- The number of units within the Lily Bay development area will be limited in perpetuity.

Thus, this development area meets the CLUP objective of allowing growth in an area of special planning needs and of knowing with certainty what its maximum extent, both geographically and in numbers, will be.

The Commission also finds that, while the development contemplated under the Concept Plan for this area will substantially alter the existing natural character of the development area footprint itself (changing it from working forest to an area of relatively intense development), this footprint excludes certain high-value natural resources that make up part of the township’s natural character, and the provisions of the Concept Plan assure that high-value natural resources within and surrounding this footprint will be protected.

The following facts and analysis are presented to illustrate some of the specific considerations that led the Commission to reach these conclusions:

(i) *The Lily Bay Development Area Is Appropriately Located Within Lily Bay Township*

The Lily Bay development area contains 1,852 acres (less than one-tenth of Lily Bay Township) and is located in the southernmost portion of the Township closest to existing development and infrastructure. The principal development area (all but the 52 acres east of Lily Bay Road, which is limited to small-scale uses akin to a commercial sporting camp) straddles Casey's Road, starting about ¼-mile west of Lily Bay Road. None of the development will have frontage on Lily Bay Road. The development area is irregularly shaped but at its longest dimensions is about two miles east-to-west, extending to Carleton Point and Burgess Brook, and about two miles south-to-north, including 9,888 feet of shore frontage along Lily Bay.

A little more than half of the development area is within one road mile of the established settlement at Lily Bay,¹⁰⁴ thus meeting the distance portion of the Commission's adjacency criterion. (However, the proposed maximum of 404 units and related non-residential uses are more intensive both as to numbers and type than the existing development pattern. Therefore, the development area does not meet the "compatible development" portion of the adjacency criterion and, consequently, invokes the requirement in the P-RP Subdistrict for "comparable conservation measures."¹⁰⁵)

(ii) *The Amount And Location Of Development Is Permanently Fixed*

A maximum of 404 units plus recreational and other support facilities may be located within the Lily Bay development area. The number of units is permanently limited by means of restrictive covenants imposed on all land within the development area.¹⁰⁶ The remainder of Lily Bay Township in Plum Creek's ownership must be placed into permanent conservation prior to any development occurring, thereby preventing future expansion of the development area both in terms of location and intensity.

(iii) *High-Value Natural Resources Are Protected*

Specific provisions of the Concept Plan protect the natural resources within and surrounding the Lily Bay development area by excluding from the development footprint known high-value natural resources and by establishing land use restrictions to protect both known natural resources

¹⁰⁴ LURC: Nov. 5, 2007, A Comparison of Development Elements of Plum Creek's Moosehead Lake Region Concept Plan Proposal to the Commission's Adjacency Principle, pp. 6, 8.

¹⁰⁵ See paragraph 9.F.(3).

¹⁰⁶ Concept Plan, Sep. 23, 2009, Appendix B.

and those that have not yet been identified. For example:

- While part of the large habitat region for Canada lynx as identified by US FWS, the development area is of limited size and, according to the record, the lynx habitat within it is transitory. The development area does not include the ridge area of the peninsula or the north side of the peninsula, where most documented lynx sightings have occurred.¹⁰⁷
- The development area's boundaries exclude certain known natural resources (e.g., waterfowl and wading bird habitat). Other specific natural resources within the development area are subject to "no disturbance" buffers and land use restrictions (e.g., a 250-foot buffer either side of Burgess Brook).
- The Concept Plan limits development over a mapped sand and gravel aquifer.
- Development will be subject to a long-term development plan review process that contains specific criteria related to avoiding and minimizing impacts to high-value habitat features and functions, as well as subdivision or development permit review processes and their criteria for approval, including "no undue adverse effect" on natural resources (Ch. 10.24 of the Commission's rules).

(c) *The Natural Character And Remoteness Of Areas Surrounding Lily Bay Township Are Not Unduly Compromised By The Lily Bay Development Area*

While the Commission does not find Lily Bay Township to be remote, it finds that the areas north of the township and particularly beyond the settlement of Kokadjo and the mountainous territory east of Lily Bay Township are characteristic of the jurisdiction's remote interior.¹⁰⁸ In light of the provisions of the Concept Plan – particularly those that assure that (i) the Lily Bay development area is appropriately located, (ii) the amount and location of development within the Lily Bay development area is permanently fixed, (iii) high-value natural resources are protected, (iv) build-out of development can proceed only in tandem with the development of a resort core and related management of self-contained recreational opportunities, and (v) the surrounding area will be permanently conserved – the Commission finds that the Lily Bay development neither unduly compromises the undeveloped landscape in the surrounding region that is at the

¹⁰⁷ US FWS, Sep. 14, 2007 filing, p. 10 (note that the size of the Lily Bay development area was substantially reduced since US FWS' comments were received); MA-NRCM: Struhsacker, Aug. 31, 2007 filing (*see attached maps of lynx occurrences*); *see also* paragraph 9.E.(2)(c)(i) for additional discussion of impacts of the Concept Plan on Canada lynx.

¹⁰⁸ For example, these townships are not contiguous with organized municipalities, are increasingly distant from population centers, are not served by a public road system or other public infrastructure, and have little or no development. *See* definitions of "fringe" and "remote" at CLUP, 1997, p. A-1.

heart of the region's natural character, nor unduly impinges upon the remoteness of the surrounding region that is part of the jurisdiction's interior.

In reaching this conclusion, the Commission evaluated the record evidence with respect to the potential "off-site" effects emanating from the Lily Bay development area including, *inter alia*, the effects on the surrounding undeveloped forest resource, scenic resources impacts, effects on primitive recreational resources and uses, effects of boating activity on the character of adjacent bays, and traffic impacts on remoteness and natural character of the surrounding area. The following facts and analyses are presented to illustrate some of the specific considerations that lead the Commission to reach this conclusion:

(i) *The Surrounding Undeveloped Forest Is Permanently Protected*

The forest surrounding the Lily Bay development area encompasses, most immediately, the rest of Lily Bay Township and the nearby minor civil divisions of Day's Academy Grant Township, Spencer Bay Township, T1 R12 WELS, Frenchtown Township, and the Town of Beaver Cove. About 91,000 contiguous acres in this immediate area are subject to the MRCE. By directing development to a single, confined area within Lily Bay Township that is close to existing development and roads, and by permanently limiting development and parcelization in the surrounding area pursuant to the terms of the MRCE, the surrounding forest to which parcelization and development may otherwise advance is permanently protected.

(ii) *The Lily Bay Development Area Will Not Cause Undue Adverse Scenic Impacts*

Public visual impacts of development in the Lily Bay development area are limited because of the location of the development area in relation to public vantage points, as well as the provisions in the Concept Plan that establish standards and procedures for minimizing scenic impacts from development.¹⁰⁹

With respect to its location, the Lily Bay development area is visible from public vantage points on Lily Bay (the water body) and Sugar Island, and from a small section of Lily Bay State Park (the Mud Brook group campground). The development area is visually isolated from the rest of Moosehead Lake and most of Lily Bay State Park due to the blocking effect of Sugar Island and the complex shoreline of the Town of Beaver Cove and southern Lily Bay Township.¹¹⁰ The greatest extent of visibility

¹⁰⁹ These standards and procedures are discussed at paragraph 9.C.(1).

¹¹⁰ LURC: Palmer, Aug. 31, 2007, A Review of the Potential Visual Effects from Implementing the Proposed Concept Plan for Plum Creek's Lands in the Moosehead Lake Region, pp. 46-67.

from Sugar Island and the bay itself is along the Lily Bay shoreline from Carleton Point west, most of which is outside of the development area, and the height of land on the Lily Bay peninsula, most of which lies outside of the Lily Bay development area. Existing development along Lily Bay's shoreline is moderately visible from these vantage points. According to LURC consultant, James Palmer, if clearing around homes is limited and vegetative buffers are in place, "the visual impact [from Sugar Island, the bay, and Mud Brook camp ground] is minor."¹¹¹ The most sensitive concerns will be the location and configuration of a central lodge and the location, size, and materials of a potential marina.¹¹²

Importantly for conserving the visual character of the larger region, none of the development area fronts Lily Bay Road. While the Commission's standards would in any case require a vegetated buffer along the road, the development area is at least 1,000 feet from the road. The only visual evidence of it along Lily Bay Road is likely to be signage at the entry road, which will be regulated pursuant to the Commission's sign standards contained in Ch. 10.

(iii) *The Development Contemplated At Lily Bay Will Not Lead To Overuse Of Primitive Recreational Resources*

Because the Concept Plan permanently limits the number of units within the Lily Bay development area and requires the construction of a resort core and on-site recreational facilities, any rise in the recreationist population attributable to the Lily Bay development area will not materially increase the use of recreational resources and infrastructure in the surrounding area.

MA-NRCM witness Costas Christ projected that, upon build-out of the Lily Bay development area, the number of people and vehicles that would "head off into surrounding wilderness areas" on an average summer day as a result of the Lily Bay development would be an average of 59 vehicles per day carrying 118 persons.¹¹³ Presumably, many would be visiting the various remote destinations inventoried by MA-NRCM,¹¹⁴ although no estimates were provided by Mr. Christ on how they would distribute their trips. Any attempt to distribute these trips leads to small numbers. For example, if as many as ten percent of the projected travelers decided to

¹¹¹ LURC: Palmer, Aug. 31, 2007, A Review of the Potential Visual Effects from Implementing the Proposed Concept Plan for Plum Creek's Lands in the Moosehead Lake Region, p. 49.

¹¹² See also paragraph 9.E.(1).

¹¹³ MA-NRCM: Christ, Aug. 31, 2007 filing p. 7.

¹¹⁴ MA-NRCM identified at least 10 "remote recreation destinations" within the east side of the Plan Area, and another nine in townships that border the Plan Area on the east side of Moosehead Lake. These did not include known destinations on the east side that MA-NRCM evidently did not consider "remote" but do offer opportunities for primitive recreational activities, such as Prong Pond. See, e.g., MA-NRCM: Struhsacker, Aug. 31, 2007 filing, Exhibit 8.

visit a given remote recreational destination on the same day, resulting in six vehicles with twelve visitors, those visits likely would be divided further by time of day, yielding few visitors at any one time attributable to the Lily Bay development.¹¹⁵ The significant number of “remote recreational destinations” will dilute the impact of a larger population on any one.

LURC consultant Mark Anderson did not hazard a projection of use of recreational areas because historical data are unavailable, but he surmised that the impact on primitive recreation would be different under two scenarios – one in which resorts were built with recreational amenities and one in which residential second home communities were built with minimal resort amenities. He concluded that the former may enhance the diversity of recreational opportunities, including primitive recreation, while the latter would diminish them.¹¹⁶ This is because, in the latter case, more people would be in the region but few additional recreational opportunities, developed or primitive, would be available to accommodate them. On the other hand, a resort with recreational amenities will keep on-site a larger share of its visitors to the resort itself, thus decreasing the need or desire to travel beyond the resort to satisfy recreational demands. As discussed in paragraph 9.E.(1), the provisions of the Concept Plan require that build-out of the Lily Bay development area can proceed only in tandem with the development of a resort core and related management of self-contained recreational opportunities.

(iv) *Boating Activity On Lily Bay Will Not Unduly Affect The Character of Adjacent Bays*

Although the record does not include specific testimony on existing boating levels in Lily Bay or Spencer Bay, the Commission finds that most of Spencer Bay is in the semi-primitive range of the Recreation Opportunity Spectrum (“ROS”),¹¹⁷ and different sections of Lily Bay fall within the semi-primitive to rural range of the ROS, with the characterization moving to the rural part of the range – at least visually if not also in terms of boating activity – as one approaches the coves at the eastern end of the bay and Lily Bay State Park. The Lily Bay development area is at this “rural” end of the spectrum.

¹¹⁵ Using a “logical formula” (i.e., not based on empirical information), Christ’s projections for trips to wilderness destinations from all development in the Plan Area was 287 vehicles carrying 576 people per average summer day. MA-NRCM mapped some 35 “remote recreation destinations” in the Plan Area and surrounding region, not including other areas where primitive recreation also is popular, such as Prong Pond and the West Outlet of the Kennebec River.

¹¹⁶ LURC: Anderson, Aug. 31, 2007, Review of Report by Dr. John Daigle, pp. 17-19.

¹¹⁷ See paragraph 9.E.(1)(b)(i) for an explanation of the ROS and the values and limitations of its application to evaluating the impacts of the Concept Plan.

Based on the ROS classification scheme as modified for water environments, boating activity in the nearly 6,000-acre Lily Bay, if distributed across the whole, would have to stay within the following limits to be classified as “primitive,” “semi-primitive non-motorized,” “rural natural,” and “rural developed”:

- Primitive: 12 boats at one time, non-motorized
- Semi-primitive, non-motorized: 53 boats at one time, non-motorized
- Rural natural: 118 boats at one time, including motor boats
- Rural developed: 294 boats at one time, including motor boats

These numbers would need to be less if concentrated in one section of the bay. For example, if all the boating activity at a given time were concentrated in the eastern (more rural) third of the bay, the maximum number of boats at one time would be:

- Primitive: 4 boats at one time, non-motorized
- Semi-primitive, non-motorized: 18 boats at one time, non-motorized
- Rural natural: 39 boats at one time, including motor boats
- Rural developed: 98 boats at one time, including motor boats

While the record does not include specific projections of boating activity, the Commission seeks to ensure that development on lakes remains below an average of one dwelling per ten surface acres of water to avoid crowding of surface waters.¹¹⁸ Applying this guideline to the Lily Bay development area is not straightforward, since most of the units and lots will likely not front directly on the water, although they likely will have legal access to the bay. If all units contemplated for the Lily Bay development area are considered, the limit for Lily Bay would be approximately 588 – well above the maximum 404 units.

Based on these general projections and the Concept Plan requirement that the number of boats accommodated at shoreland structures in the Lily Bay development area not exceed the carrying capacity of Lily Bay or its major sections for a “Rural Natural” environment,¹¹⁹ the Commission finds that the boating activity attributable to the Lily Bay development area will not unduly affect the character of adjacent bays.

¹¹⁸ CLUP, 1997, p. C4.

¹¹⁹ Concept Plan, Sep. 23, 2009, Sec. II, Sub-Ch. IV, 10.32.B.7.

(v) *The Projected Traffic Attributable To The Lily Bay Development Area Will Not Unduly Affect Remoteness And The Natural Character Of The Surrounding Area*

In reviewing projected traffic volumes, the Commission accepts the analysis of Gorrill-Palmer, consultants to Plum Creek, as approved by MaineDOT and subsequently revised to consider the potential distribution of trips into areas of wildlife sensitivity.¹²⁰ At build-out, the Lily Bay development is projected to add nearly 1,900 vehicles per day (Average Annual Daily Traffic, or “AADT”) to Lily Bay Road headed to or from Greenville and about 200 vehicles per day headed to or from Kokadjo.¹²¹ When added to background growth and to new trips from development elsewhere in the Plan Area, the projected AADT at Kokadjo will increase to nearly 1,100. This projected volume will drop farther north (e.g., to about 900 at Sias Hill Road south of Golden Road).

While a major concern of traffic is its impact on wildlife, particularly on Canada lynx,¹²² it is also relevant to its effect on natural character and remoteness. Lily Bay Road, as a paved, two-lane, major collector, with power lines and many signs of human presence, has already influenced the natural character of the area along the length of the roadway south of Kokadjo, creating accessibility and accommodating a moderate existing level of vehicular movement. The addition of traffic south of the Lily Bay development area, where Lily Bay Road already serves a significant number of homes and visitor activity and approaches the service center of Greenville, will not be inconsistent with the existing character of this stretch of road. The addition of traffic north of the development area is of greater concern because it approaches the jurisdiction’s remote interior. The addition of 370 vehicles per day at Kokadjo, including about 200 attributable to the Lily Bay development, is high percentage growth but modest in gross numbers. In its totality, the Commission finds that such additional traffic growth will not cause undue adverse impact to the remoteness or natural character of the surrounding area.

¹²⁰ Plum Creek: Gorrill, Jan. 14, 2008 filing.

¹²¹ See the table in paragraph 9.E.(2) for a summary of projected AADT volumes on, *inter alia*, the Lily Bay Road at the Lily Bay State Park entrance and at Kokadjo.

¹²² See paragraph 9.E.(2) for a discussion of the impacts to Canada lynx of projected increases in traffic attributable to Concept Plan development.

(9) **The Rockwood/Blue Ridge And Brassua Lake Development Areas Are Consistent With The CLUP**

MRFC commented throughout the proceeding that the type of zoning and amount of development proposed in the Rockwood/Blue Ridge and Brassua Lake development areas would be “overpowering in the context of this small community [Rockwood]” and “far too much and too heavy a hit for this location [Brassua Lake Peninsula].”¹²³ It argued for large reductions in the overall size of development areas, reductions in the number of allowed units, and for focusing non-residential development in an area adjacent to Rockwood Village.¹²⁴ It also argued that the land zoned for development in this area is more than needed to accommodate the amount of development proposed, even after considering portions of the development areas with soils classified as low potential for development, which it asserted should be eliminated from the development areas.¹²⁵ In addition, MA-NRCM expressed concern that if the Rockwood development area develops as proposed, “there would undoubtedly be increasing calls for Rockwood to organize and remove itself from LURC jurisdiction. If Rockwood were to do so, LURC would lose its ability to enforce the terms of the concept plan...”¹²⁶

The Concept Plan envisions a total of approximately 460 units in the Rockwood/Blue Ridge (160 units; transfers from other development areas are allowed) and Brassua Lake development areas (restricted to 300 units for the thirty-year term of the Concept Plan).¹²⁷ This general area currently has approximately 600 structures.¹²⁸ Rockwood Strip Township, located along the major State highway serving the region, is recognized by the CLUP as a service hub and an area with special planning needs that is suitable for planned development.¹²⁹ Brassua Lake is recognized by the CLUP as a Management Class 3 lake, which is potentially suitable for development and eligible for waivers of the adjacency criterion.¹³⁰ The Brassua Lake South Peninsula development sub-area is accessible off Route 6/15.

The Concept Plan takes a number of measures to assure that the proposed development does not overburden the Rockwood – Brassua Lake sub-region. At Brassua Lake, measures include limiting lake-oriented development to the southern “room” of Brassua Lake, where development already is present; limiting the number of shoreland structures on the lake;¹³¹ limiting commercial development to a scale compatible with residential development; and limiting the amount of non-residential development to an aggregate of 50 acres. In recognition of the size of the development area, the Concept Plan also

¹²³ MRFC, Mar. 7, 2008 filing, pp. 23, 26.

¹²⁴ MRFC, Mar. 7, 2008 filing, Exhibit 1.

¹²⁵ MRFC, Mar. 7, 2008 filing, pp. 20-22.

¹²⁶ MA-NRCM: Johnson, Aug. 31, 2007 filing, p. 27.

¹²⁷ Petition, Oct. 26, 2007, Petition for Rezoning, Tab 10, pp 3-5; Concept Plan, Sep. 23, 2009, Sec. II, Sub-Ch. IV, 10.28.B.

¹²⁸ Petition, Oct. 26, 2007, Petition for Rezoning, Tab 9b, p. 2.

¹²⁹ CLUP, 1997, p. 111; *see also* LURC: Feb. 11, 2004, Policy Statement on the Commission’s Level 2 Subdivision Program.

¹³⁰ CLUP, 1997 p. C7.

¹³¹ Concept Plan, Sep. 23, 2009, Sec. II, Sub-Ch. IV, 10.32.

requires the reservation of 25 percent of developable land area to meet future development or conservation needs after the thirty-year term of the Concept Plan.¹³²

In the Rockwood/Blue Ridge development area, commercial development must also be residential-scale and must be within 1000 feet of Route 6/15 in Rockwood Strip Township, where Plum Creek's ownership along the road is limited. Elsewhere within the development area, such commercial development is limited to an aggregate land area of 25 acres. In recognition of the size of the development area compared with the likely number of units, the Concept Plan requires a reservation of 50 percent of the developable land area to meet future development or conservation needs after the thirty-year term of the Concept Plan.¹³³

With respect to concern that the proposed development may in the future lead to the organization of Rockwood, thus removing the township from the Commission's jurisdiction, the Commission notes that any land use district that subsequently becomes part of an organized community continues in force until the municipality adopts provisions at least as protective of existing resources as those adopted by the Commission.¹³⁴

The Commission finds that the Rockwood/Blue Ridge and Brassua Lake development areas are appropriately located, sized, and subject to standards and review processes that ensure the protection of existing uses and resources. Consequently, the Commission finds these areas to be consistent with the CLUP.

(10) **The Land Not Included In Any Development Area Is Consistent With The CLUP**

In addition to considering the appropriateness of locations of each of the ten development areas contained within the Plan Area, the Commission evaluated the Concept Plan as a whole to determine which places were inappropriate for development and whether those places were sufficiently protected.

The Commission finds that the protections afforded on nearly 400,000 acres by the MRCE and RCE not only offer important protections for the principal values of the jurisdiction and help achieve the specific CLUP goals and policies (thereby significantly contributing to attaining the Commission's vision for the jurisdiction), but also permanently preclude residential development from places that are particularly violative of the CLUP's location of development goals and policies. Specifically, the Concept Plan permanently eliminates development from:

¹³² Concept Plan, Sep. 9, 2009, Sec. II, Sub-Ch. IV, 10.29.C.5.

¹³³ Concept Plan, Sep. 9, 2009, Sec. II, Sub-Ch. IV, 10.29.C.5.

¹³⁴ 12 M.R.S.A. § 685-A (4),

- The shores and viewsheds of remote and pristine ponds, including Fish, Ellis, Luther, Center and Knights Ponds in the northwest and southwest corners of the Plan Area;
- The shores of remote portions of accessible, developed lakes, including the shores of Moosehead Lake in Big W Township, and the east shore of Upper Wilson Pond;
- The shores of remote portions of Management Class 3 lakes, including the northwest shore of Brassua Lake and the northwest shore of Indian Pond, and other portions that are otherwise inappropriate for development;
- Areas especially valued for primitive recreation in a remote setting, including the ponds and backlands of the Roaches Ponds Tract, the backlands of Spencer Bay and Days Academy Grant area, the Number 4 and Baker Mountain area, and the Hedgehog Pond area in the southeast portion of the Plan Area; and
- Areas especially valued for primitive recreation in a largely undeveloped, yet accessible setting, including the shores of the Moose River, the shores of the East and West Outlets of the Kennebec River, and the shores of Prong Pond.

(11) **Conclusions**

For the reasons set forth herein, the Commission concludes that the Concept Plan is consistent with the CLUP's development goals and policies to (i) guide development to appropriate areas, (ii) avoid scattered and sprawling development patterns, (iii) safeguard the principal values of the jurisdiction, including a working forest, integrity of natural resources, and remoteness and (iv) assure that, at the site level, it is feasible to fit development harmoniously into the existing natural environment. This conclusion applies both to the Concept Plan as a whole and to the individual development areas contained within it.

C. **A New District Designation Is More Appropriate For The Protection And Management Of Existing Uses And Resources Within The Affected Area (12 M.R.S.A. § 685(8-A)(B))**

This section addresses the Commission’s determination with respect to the second of the two independent and alternative criteria set forth in 12 M.R.S.A. § 685-A (8-A): whether “a new district designation is more appropriate for the protection and management of existing uses and resources within the affected area.”¹³⁵

In reaching its determination as to whether the new P-RP Subdistrict is “more appropriate,” the Commission is, in particular, guided by the CLUP and whether the Concept Plan will more effectively achieve the CLUP’s vision, goals and policies as they relate to these existing resources and uses than do the existing subdistricts. As part of its evaluation, the Commission examined the likely pattern and amount of development in the affected area over the next 30 years if there were no proposed Concept Plan and Plum Creek (or subsequent owners) instead utilized existing law and regulations to achieve the development that it determined to be in its interest. By undertaking such an examination, the Commission can determine whether the Concept Plan more appropriately addresses the possible detrimental effects of this anticipated development in the affected area than does existing zoning. As such, the Commission first sets forth the threats to existing uses and resources under LURC’s current zoning approach, based on the Commission’s findings regarding the anticipated future amount and pattern of development and resulting anticipated impacts to existing resources and uses absent Concept Plan implementation, and then presents evidence supporting the Commission’s conclusion that the Concept Plan will better protect and manage existing uses and resources than LURC’s current zoning approach.¹³⁶

¹³⁵ For the purpose of making these determinations as required by the Commission pursuant to 12 M.R.S.A. § 685-A(8-A)(B)), the “affected area” is comprised of the approximately 380,076 acres proposed to be rezoned as a P-RP Subdistrict, the approximately 29,500 acres comprising the Roaches Ponds Tract, all water bodies within the boundaries of or contiguous with the boundaries of the P-RP Subdistrict and the Roaches Ponds Tract, and those specific and minimally-sized land areas beyond the P-RP Subdistrict and Roaches Ponds Tract where actions that otherwise implement provisions of Concept Plan occur or are permitted to occur (e.g., land in the Moosehead Lake region on which construction of hiking trails by BPL is permitted pursuant to Appendix N of the Concept Plan, or land in the Town of Greenville or Rockwood Strip Township on which affordable housing can be constructed pursuant to the Concept Plan and Appendices P and T thereto).

¹³⁶ While the Commission sets forth in the following paragraphs the anticipated adverse impacts of haphazard, incremental development caused, in part, by the statutory exemptions to LURC subdivision review, it does so in light of its conclusion that the Concept Plan development is appropriate, meaning it is, *inter alia*, consistent with CLUP goals and policies regarding the location of development for areas with special planning needs. (See paragraphs 9.B. and 9.F.(2)). Thus, consistent with its past concept plan decisions, the Commission continues to find that “development options based on statutory exemptions that exist outside of the Commission’s policies and regulatory framework [e.g., the “two-in-five” exemption] should not be used as a rationale for approving projects which do not [otherwise] fulfill the Commission’s policies and rules.” (LURC: Zoning Petition ZP 604, p. 19.) Eliminating the unintended harmful effects of these statutory exemptions is a desirable component of a concept plan but cannot carry the day unless the concept plan first and foremost serves as an alternative mechanism for meeting the Commission’s development goals and policies.

(1) **The Historic Amount And Pattern Of Residential Second Home Development Has Been Substantial**

The Moosehead Lake region has historically experienced a substantial amount of residential second home development. The region is part of three areas comprising the Western and Central Mountain regions, which received a vast majority of the Commission jurisdiction's new housing during the 1980s and 1990s.¹³⁷ LURC permitting records indicate that approximately 600 new dwelling units were permitted from 1971 to 2005 in the minor civil divisions that encompass the Plan Area. Because of policies of previous landowners in the affected area to not subdivide or otherwise develop portions of the affected area, the historical residential development has taken place immediately outside of the boundaries of the affected area.¹³⁸

While some of this residential second home development near the affected area has occurred in a planned, concentrated manner and been located in already developed areas, a significant portion of it has occurred in a non-compact development pattern, in outlying and more remote portions of the region and/or along lake shores in the region, and usually in areas with high natural resource values.¹³⁹ Examining this historic pattern of residential second home development, the Commission finds that in the Moosehead Lake region, as in the jurisdiction as a whole, "the case-by-case review of rezoning proposals is becoming ineffective as the principal tool for guiding growth."¹⁴⁰

As discussed more fully in paragraph 9.C., the Commission finds that LURC's reactive system of rezoning that largely relies on the adjacency criterion is and will be insufficient to protect the Moosehead Lake region from haphazard, sprawling development, and that the statutory exemption from LURC subdivision review (whereby a landowner is allowed to subdivide any parcel into two additional lots every five years without prior Commission review) has exacerbated the haphazard development pattern.

¹³⁷ CLUP, 1997, p. 110.

¹³⁸ Petition, Oct. 26, 2007, Petition for Rezoning, Tab 9b.

¹³⁹ "In the twenty year period, a total of 452 building permits were issued for new residential structures in the townships fronting Moosehead Lake." (CLUP, 1997, p. 111.) "Fourteen fringe communities in the Rangeley and Moosehead Lake regions accounted for over twenty percent of building permits issued during the 1971-1991 period." (CLUP, 1997, p. 115.) See also OSI, Nov. 20, 2007 filing (Baseline Development Scenario for the Plum Creek Moosehead Project Lands, Discussion Paper No.1), pp. 9-10. After eliminating the now-repealed statutory exemption for 40-acre lots, OSI calculated that an estimated 775 lots were otherwise created in the last twenty years in the Moosehead Lake region.

¹⁴⁰ CLUP, 1997, p. 124.

(2) **The Anticipated Future Amount And Pattern Of Residential Second Home Development Without The Concept Plan Is Likely To Be Substantial, Incremental And Haphazard**

In undisputed testimony before the Commission by TNC, the general picture of anticipated future development in the affected area was presented to the Commission:

Over the last ten years, The Nature Conservancy has been an active participant in land conservation throughout northern Maine, working with numerous landowners on a variety of land transactions, and observing changing land ownership and real estate market trends. There is no question in our minds that in the absence of a plan for development, subdivision and development will continue. It will continue in a more haphazard and unplanned way, relying on individual kingdom lot sales which could close off large areas of the [affected] area to public access, as well as adjacency and other subdivision options open to the landowner ... Outside of a few well respected family ownerships, the nature of Maine's large landowners has changed dramatically in the last ten years. Where once the forest products industry was the largest owner of forest land in Maine, now they are a small minority in the ownership pie. Investment owners now predominate, and they operate on a much shorter time horizon – usually ten years or less – before they turn land over again.¹⁴¹

Testimony from two other parties (FSM and OSI) with significant experience in land conservation in the jurisdiction was consistent with the general picture of anticipated development contained in the testimony of TNC. FSM testified that:

FSM sees the choice before the Commission as not between the approval of the proposed concept plan/P-RP District or no further development in the Moosehead region, but between planned and predictable growth with significant conservation or unplanned and sprawling growth with little or no permanent conservation.¹⁴²

OSI testified that:

In all likelihood, if Plum Creek's region-wide lake concept plan proposal is turned down or withdrawn, we would expect the company to seek other regulatory avenues to develop portions of its Moosehead area land base... From a conservation perspective, it is clear that the two-in-five development option that Plum Creek could pursue, including kingdom lots along valued lakes and ponds, would likely result in a scattered piecemeal pattern of development, some of which could occur with minimal LURC oversight in sensitive locations such as undeveloped shores. Moreover, if Plum Creek were to pursue a development strategy that included a significant number of large kingdom lots (we estimated 100 acres per lot), the total amount of acreage allocated to residential lots in the baseline scenario would be comparable to that in Plum Creek's region-wide

¹⁴¹ TNC: Rumpf, Tetreault and Vickery, Aug. 31, 2007 filing, p. 12.

¹⁴² FSM: Hutchinson, Aug. 31, 2007 filing, p. 2.

concept plan (though, in reality, only a small portion of each kingdom lot would likely be developed).¹⁴³

In addition, the Maine Forest Service (“MFS”), as a commenting governmental review agency in this proceeding, provided the Commission with the same conclusion:

We have used as the baseline for our comments the understanding that under LURC’s existing rules, landowners can develop or create two lots from every existing parcel, every five years and can apply for approval of subdivisions and planned unit developments ... Thus the alternative to the development specified in the Lake Concept Plan is not necessarily no development ... were Plum Creek to proceed without a Lake Concept Plan, development likely would be more scattered, and the commission would have little oversight of the location of lots created under the “two in five” exemption.¹⁴⁴

The Commission finds the predictions contained in the testimony on this issue by TNC, FSM and OSI, and the comments of MFS, as well as other witnesses who similarly testified, to be credible.

Further, the Commission received testimony, including from OSI and Plum Creek, regarding the specific amount and location of anticipated future development in the affected area in the absence of the Concept Plan. The Commission finds that the analysis undertaken and the projections provided to the Commission by OSI, which estimated the development potential within the Plan Area and Roaches Ponds Tract that could likely occur under the various rezoning, subdivision and smaller lake concept plan regulatory options currently available to landowners in the jurisdiction, to be the most thorough, impartial and realistic.¹⁴⁵ OSI estimates that, under the existing land use laws and with consideration to market conditions, Plum Creek would have the ability to develop over a thirty-year period approximately 618 “high value” residential lots on its Moosehead Lake region holdings. These figures include 252 shorefront lots and 366 back lots.¹⁴⁶

¹⁴³ OSI: Bley, Nov. 20, 2007 filing, pp. 3, 12.

¹⁴⁴ MFS, Sep. 7, 2007 filing, p. 2.

¹⁴⁵ See OSI: Bley, Nov. 20, 2007 filing, Baseline Development Scenario for the Plum Creek Moosehead Project Lands, Discussion Paper No.1. While the Commission agrees with OSI that any estimate of future development amounts and patterns is “an inexact science that relies on numerous assumptions and estimates,” the Commission also finds that such estimates are both possible, based on past development patterns and analysis of the likelihood of a deviation from these historic patterns, and useful in helping the Commission determine whether the proposed Concept Plan is more appropriate than existing zoning.

¹⁴⁶ OSI: Bley, Nov. 20, 2007 filing, Baseline Development Scenario for the Plum Creek Moosehead Project Lands, Discussion Paper No.1, p. 11. The Commission notes that OSI did not address the amount of development that might occur absent the Concept Plan beyond the next 30 years.

(3) **Without The Concept Plan, Existing Resources And Uses Within the Affected Area Will Likely Experience Significant Adverse Impact From Incremental And Haphazard Development**

The Commission finds that all of the following impacts from development are likely to occur in the affected area over the next 30 years under LURC's existing zoning:

- Significant levels of fragmentation of ownership of the forest resource;
- Substantial amounts of haphazard, sprawling development, including the creation of "kingdom lots" throughout the affected area, with much of this development located in remote portions of the affected area along the shores and within the viewsheds of lakes and ponds and other areas of high recreational and scenic value; and
- Substantial limitations to public access and use of portions of the affected area as it is developed.

The Commission further finds that these anticipated impacts are counterproductive and harmful to the long-term protection and management of commercial forestry and outdoor recreational uses and the existing forest and other natural, recreational, and scenic resources upon which these two predominant existing uses depend. Based on these likely impacts, the Commission concludes that significant diminishment in all four principal values of the jurisdiction in the affected area are likely to occur under existing subdistrict designations and attendant requirements.¹⁴⁷ The anticipated impacts specific to forest, recreational and scenic resources and uses are discussed below.

(a) *Without the Concept Plan, Existing Forest Resources And Uses Will Experience Significant Adverse Impact From Incremental And Haphazard Development*

Based on the testimony presented to it, the Commission finds that the anticipated land use pattern in the affected area over the next 30 years absent the Concept Plan will fragment landownership of the forest resource. TNC testified before the Commission on this likely fragmentation:

In our opinion, the alternative to planned development is sobering. Based on our experience in negotiating numerous conservation transactions over the last several years, covering hundreds of thousands of acres within the UT, we see inexorable market trends which will continue to encourage landownership turnover and increasing fragmentation and development within the LURC jurisdiction over time. Prices for remote forest parcels continue to climb, and there is increasing interest on the part of many high net worth individuals in investing in so-called "kingdom lots" to tie up their own personal resorts. This parcelization, which often does not require LURC subdivision approval, can threaten traditional public access

¹⁴⁷ The Commission's finding in this regard for the affected area is consistent with the conclusion the Commission reached for the jurisdiction as a whole (*see* CLUP, 1997, p. 125).

and recreational uses as well as landscape scale forest habitat management approaches.¹⁴⁸

Regarding the forest resource and existing commercial forestry, Plum Creek witness Robert Wagner confirmed TNC's testimony, testifying that "[w]ithout the [Concept Plan] or similar permanent protection, the highly desirable forestlands around Moosehead Lake would be under constant threat of parcelization, and the continued erosion of the ability to manage the forest landscape for ecological, wood production and other objectives."¹⁴⁹ Wagner further testified that fragmentation of the forest resource decreases the willingness of landowners to conduct timber harvests, leads to a "continuous erosion of wood supply," and is a significant ecological concern because it eliminates the ability to conduct landscape-level management that is often necessary to achieve wildlife habitat and other ecological objectives.¹⁵⁰ Wagner's observations were confirmed by MILLS witness C. Charles Lumbert:

... I have serious concerns that, if the proposal is not approved, ownership of the timberlands will become fragmented as we have seen in the past and we will experience the same supply issues we have had with some of the other ownerships. If these woodlands are not placed under conservation easements which will preserve the right to conduct timber harvesting operations, Plum Creek would have every right to sell off parcels of its land piecemeal. Based on our experiences with other properties, many of the parcels will be developed or otherwise removed from timber harvesting, or timber harvesting will be prohibited on some parcels. This would adversely affect our ability to maintain a steady supply of lumber for our mill, which could result in reductions of our operations and possibly layoffs of our employees. A reduction of the supply of raw logs from Plum Creek would have devastating effects on both our company and the local economy.¹⁵¹

The Commission finds the testimony on this issue by TNC, Wagner and Lumbert to be credible, and further agrees with MILLS when it states that there is "a substantial danger to the forestry and forest products industries in the Moosehead Lake region" from anticipated future residential development¹⁵² and that "unregulated development under existing regulations...would remove acreage from production and limit productivity for parcels which remained in production."¹⁵³

¹⁴⁸ TNC: Rumpf, Tetreault and Vickery, Aug. 31, 2007 filing, p. 5.

¹⁴⁹ Plum Creek: Wagner, Aug. 31, 2007 filing, p. 5.

¹⁵⁰ Plum Creek: Wagner, Aug. 31, 2007 filing, pp. 3, 6.

¹⁵¹ MILLS: Lumbert, Aug. 31, 2007 filing, p. 2.

¹⁵² MILLS, Mar. 7, 2008 filing, p. 2.

¹⁵³ MILLS, Mar. 7, 2008 filing, p. 4.

(b) *Without The Concept Plan, Existing Scenic And Recreational Resources And Uses Will Likely Experience Significant Adverse Impact From Incremental And Haphazard Development*

Numerous parties and members of the public – including representatives of businesses and organizations that focus on outdoor recreation in the affected area, as well as individuals who travel to the affected area to hunt, fish, boat or hike in relative solitude – explained to the Commission how important is the remote and undeveloped nature of most of the affected area to the existing outdoor recreational experience.¹⁵⁴

The Commission finds that the anticipated landownership fragmentation and the haphazard, sprawling development pattern in the affected area absent the Concept Plan will substantially impinge upon the remote and scenic character of many parts of the affected area, including along the shores of lakes and ponds, that are the setting for existing recreational uses in the affected area. The Commission agrees with Plum Creek witness Richard Smardon that “the alternative visual landscape future – without this concept development plan – could have more visual impact to sensitive landscape resources due to random unorganized development.”¹⁵⁵

In addition, the Commission finds that the likelihood that the public will be denied access to portions of the affected area increases substantially as the number of landowners in the affected area increases. As Plum Creek witness John Daigle stated, “In fact, given the trend of private ownership, the failure to implement the plan may result in contraction of land available for traditional and modern recreational use.”¹⁵⁶ Even a few instances of residential development can cause this result, such as when a new “kingdom lot” owner of the shoreline of an entire pond eliminates public access to the shore of that pond. Numerous witnesses before the Commission, including many members of the public, testified to their concerns regarding the absence of protection for public recreational access under existing zoning laws.¹⁵⁷

¹⁵⁴ See, e.g., AMC: Clish, Aug. 31, 2007 filing; ATVM: Rust, Aug. 31, 2007; MWGO: Slater, Aug. 31, 2007 filing.

¹⁵⁵ Plum Creek: Smardon, Aug. 31, 2007 filing, p. 9.

¹⁵⁶ Plum Creek: Daigle, Aug. 31, 2007 filing, p. 8.

¹⁵⁷ See, e.g., ATVM: Kleiner and McCormick, Aug. 31, 2007 filing; TNC, Aug. 31, 2007 filing, p. 5.

(4) **The Concept Plan Is More Appropriate For The Protection And Management Of Existing Forest Resources And Commercial Forestry Uses**

The Commission finds that the Concept Plan better protects and manages the existing forest resource and the existing commercial forestry uses in the affected area than does LURC's existing zoning, and in doing so better protects "the economic value of the jurisdiction for fiber production ... particularly the tradition of a working forest, largely on private lands."

This better protection and management of forest resources and commercial forestry is achieved because nearly 400,000 acres of land within the affected area will be conserved. Pursuant to the terms of the MRCE and RCE, this acreage will be available for continued commercial forestry, but will be subject to numerous restrictions on the type and amount of development and the forestry practices that can occur in this vast area. These conservation easement restrictions, which must be in place before any development can occur, collectively will result in better protection and management of the existing forest resource and the existing commercial forestry use for two fundamental reasons:

(a) *Haphazard, Incremental Development Within The Plan Area Is Forever Prohibited*

All new residential development, and many forms of commercial and industrial development, are forever prohibited and eliminated from 393,764 acres. Since residential development can only occur in a concentrated fashion in development areas comprising 15,812 acres that are surrounded by two conservation easements, no haphazard or sprawling residential development can ever occur outside of the development areas. Therefore, the likelihood of fragmentation of the forest resource occurring in the future under existing zoning, and the resultant harms to commercial forestry, is entirely and permanently foreclosed for approximately 97 percent of the land in the affected area.

In addition, except for limited and narrow circumstances, most non-forestry commercial and industrial development is also prohibited in these 393,764 acres. Those commercial or industrial activities that are allowed (*e.g.*, construction and operation of a limited number of publicly accessible recreational facilities such as back country huts, campgrounds and boat launches; limited gravel extraction; limited spreading of septage; and wind power development on certain highlands in the southwest portion of the Plan Area) will not result in material amounts of land being removed from the commercial forestland base or interfering with forest management activities. Further, the ability to subdivide these 393,764 acres is sharply circumscribed by the easements.

Thus, all incentive for land conversion from commercial forests to residential and other uses incompatible with either commercial forestry uses or outdoor recreation uses has been eliminated. As noted by MILLS witness C. Charles Lumbert,

[i]f LURC approves the Plum Creek proposal, it will guarantee that a vast geographic area will remain available for timber harvesting and will provide a steady and sustainable supply of lumber for our mill and for other mills in the area.¹⁵⁸

By contrast, under LURC's existing zoning and attendant development standards, absent a concept planning process the amount of permanent land conservation that LURC would have the authority to require would be a small fraction of these 393,764 acres, leaving a vast portion of the affected area vulnerable to haphazard, incremental development and the resulting fragmentation of the forest resource resulting over the next 30 years and beyond. The Commission agrees with OSI that, "the overall level of mandated conservation would be far less than that proposed by Plum Creek in its region-wide lake concept plan."¹⁵⁹ MFS reached the same conclusion when it commented to the Commission that:

... absent a Lake Concept Plan, Plum Creek would not be required to commit to land conservation measures ...it is apparent that by concentrating development and permanently conserving forest land and insuring sustainable management, [the] Concept Plans offer the opportunity to address forestry concerns to a greater extent than the alternative.¹⁶⁰

(b) *Forest Management Activities Must Be Conducted So As To Protect Forest Resources For The Long-Term*

The MRCE contains a number of stipulations that require all forest management activities be conducted in a manner that protects forest resources for the long term. For instance, the conservation easement's governing "Conservation Values" require that forest management activities be conducted so that the condition of the land is "a healthy, diverse in age and biology, forested land area containing high quality, productive and non-eroding soils, and capable of providing a continuing and renewable source of commercial forest products," and "a large, largely unfragmented, diverse, substantially natural, and sustainably managed forest land area."¹⁶¹ No similar requirements are contained in existing LURC zoning. The MRCE establishes numerous terms and conditions to ensure landowner compliance with these Conservation Values.

¹⁵⁸ MILLS: Lumbert, Aug. 31, 2007 filing, p. 2; *see also* MILLS: Cushman, Aug. 31, 2007 filing.

¹⁵⁹ OSI: Howell, Nov. 20, 2007 filing, p. 12.

¹⁶⁰ MFS, Sep. 6, 2007 filing, p. 2.

¹⁶¹ Concept Plan, Sep. 23, 2009, Appendix C.

(5) **The Concept Plan Is More Appropriate For The Protection And Management Of Existing Natural Resources**

The Commission finds that the Concept Plan better protects and manages other existing natural resources in the affected area than does LURC's existing zoning, and in doing so better protects the value of the jurisdiction for "diverse, abundant and unique high-value natural resources and features."

(a) *Development Has Been And Will Be Better Guided To Appropriate Locations Due To Prospective Decision-Making That Considers Natural Resources*

Because under the Concept Plan decisions on the location of development in the affected area have been made prospectively and not reactively, holistically and not incrementally, and fully and not just partially, and these prospective natural resource siting decisions have all been made with the benefit of expert advice from governmental review agencies¹⁶² as well as information provided by certain parties,¹⁶³ Plum Creek and ultimately the Commission amended¹⁶⁴ the Concept Plan so that entire development areas were eliminated or portions of development areas containing high-value natural resources were excluded from development zoning. Subsequent site-specific decisions on the location of development within the development areas will also largely be made in this manner,¹⁶⁵ assuring that development will be guided to appropriate locations to avoid and minimize impacts to natural resources within development areas.

Recognizing that areas making up parts of larger development areas may contain valuable, but not yet identified natural resources, the Concept Plan also includes requirements not contained in existing zoning that ensure that development within these larger development areas will be located appropriately so as to not infringe upon valuable natural resources. In these areas, no development can proceed until the Commission approves a long-term development plan that avoids where possible and otherwise reasonably minimizes habitat fragmentation and impacts to wildlife travel corridors, aquatic and riparian habitat functions and connectivity, and maintains high-value habitat features and functions.¹⁶⁶

¹⁶² See, e.g. Tr. Jan. 18, 2008, pp. 83-92.

¹⁶³ See, e.g., MA-NRCM: Charry, Aug. 31, 2007 filing regarding Long Pond, Brassua Peninsula, and Burgess Brook.

¹⁶⁴ See paragraph 7.E(8) (discussing Commission's determination to consider amending the Concept Plan).

¹⁶⁵ See paragraph 9.E.(2)(a).

¹⁶⁶ See Concept Plan, Sep. 23, 2009, Sec. II, Sub-Ch. IV, 10.29.C.3.

(b) *The Conservation Easements Offer Greater Natural Resources Protections Than Existing Zoning*

Under the Concept Plan, high-value natural resources located outside of development areas are not left vulnerable to future development proposals but instead are protected forever from development pursuant to the terms of the MRCE and RCE. Existing zoning does not offer such permanence.

The landscape-scale size of these two conservation easements – a scale that cannot occur under existing zoning – also offers significantly greater natural resource protection than existing zoning. According to uncontested testimony offered by TNC:

The Conservancy, through its conservation planning, has confirmed the value of large blocks of unfragmented forest land in protecting the native diversity of plants and animals in Maine’s North Woods...large blocks of sustainably managed working forests are critical to retaining the ecological capital of Maine...the [Concept Plan] offers the opportunity to permanently protect over 400,000 acres of largely unfragmented forest lands, connecting existing conservation lands to the east and west, and creating a conserved buffer along the southern edge of LURC jurisdiction.¹⁶⁷

Further, the MRCE, covering the vast majority of land making up the affected area, contains numerous specific provisions that greatly enhance the protection of natural resources compared to existing zoning. For example, the conservation easement requires all forest management activities be conducted in a manner that protects “the diverse and extensive bogs, wetlands, rivers, streams, lakes, remote ponds, and other aquatic habitats, including fisheries habitats, their water quality, undeveloped shorelines and riparian areas, and the ecological values of these areas” and “the diverse and extensive wildlife, plant, forest and other terrestrial habitats, including habitats of rare, threatened and endangered flora and fauna, natural communities, and the ecological values of these areas.”¹⁶⁸ In addition, the MRCE contains specific ecological protections not found in existing LURC zoning, such as additional or expanded protections for natural areas (including 30 site occurrences of rare and endangered plants and exemplary natural communities), endangered and threatened species, deer wintering areas, vernal pools, inland waterfowl and wading bird habitats, and loon nests.

¹⁶⁷ TNC: Rumpf, Tetreault and Vickery, Aug. 31, 2007 filing, p. 6; *see also* Tr. Jan. 18, 2008, pp. 95-96.

¹⁶⁸ Concept Plan, Sep. 23, 2009, Appendix C.

(6) **The Concept Plan Is More Appropriate For The Protection And Management Of Existing Scenic And Recreational Resources And Outdoor Recreational Uses**

For the following reasons, the Commission finds that the Concept Plan better protects and manages the existing recreational and scenic resources and the existing outdoor recreational uses in the affected area than does LURC's existing zoning, and in doing so better protects the "diverse and abundant recreational opportunities, particularly for primitive pursuits..." and the "natural character values" of the jurisdiction, "which include the uniqueness of a vast forested area that is largely undeveloped and remote from population centers:"

(a) *Public Access To Recreational Resources Is Permanently Guaranteed*

The MRCE and RCE establish the permanent legal right of the public to access by foot and recreate on the entirety of the lands covered by these two conservation easements. The Concept Plan also provides permanent public access to 87 miles of ITS snowmobile trails located in the affected area, to use vehicles on private roads in the Spencer Bay portion of affected area to access publicly owned campgrounds and other public recreation amenities, and to use vehicles on 57 additional miles of road for recreational access as development occurs during the term of the Concept Plan. Further, the Concept Plan includes a mandatory funding mechanism that will, prior to any development occurring, fund and create a significant number of new hiking trails in the affected area,¹⁶⁹ and then as development occurs, will fund and create additional projects to enhance both motorized and non-motorized outdoor recreation in the affected area.¹⁷⁰

This landscape-scale securing of public rights for recreational access and use in the Concept Plan eliminates a significant threat to the continuation of public outdoor recreation in the Moosehead Lake region. As explained by Plum Creek witness John Daigle:

The Plan proposes an unprecedented conservation of more than 356,000 acres, which will be open to traditional recreational pursuits – in marked contrast to the trend of private landowners limiting or eliminating public access to land in the region.¹⁷¹

The scale of this guaranteed public access and use cannot be required under existing zoning laws. In this regard, the Commission agrees with the following comment provided to it by the COALITION:

There are substantial public access guarantees in the concept plan. There are no public access guarantees associated with any land in the [OSI] baseline scenario, except potentially (but not guaranteed) on the projected 3500 acres of conservation land.

¹⁶⁹ See Concept Plan, Sep. 23, 2009, Appendices M and N.

¹⁷⁰ See Concept Plan, Sep. 23, 2009, Appendices P and R.

¹⁷¹ Plum Creek: Daigle, Aug. 31, 2007 filing, p. 5.

(b) *Development Has Been And Will Be Guided To Appropriate Locations Due To Prospective Decision-Making That Considers Scenic And Recreational Resources*

Because under the Concept Plan decisions on the location of development in the affected area have been made prospectively and not reactively, holistically and not incrementally, and fully and not just partially, and these prospective decisions as they relate to recreational and scenic resources have all been made with the benefit of expert advice from the Commission's independent consultants, James Palmer and Mark Anderson, as well as from numerous parties and members of the public, Plum Creek and ultimately the Commission amended the Concept Plan to locate development areas away from the majority of places with high-value recreational and scenic resources. For example, due to its potential impact to water-based recreational and scenic resources, development was eliminated from the shores of the undeveloped segment of the Moose River located between Long Pond and Little Brassua Lake, as well as from all of Little Brassua Lake, areas with high-value paddling resources; the undeveloped East Outlet of the Kennebec River, a high-value riverine fishing location; the undeveloped western and northern portion of Brassua Lake, a high-value remote boating and fishing location; the shores adjoining Moosehead Lake in Big W Township, located on a high-value remote boating route; all of Prong Pond, a largely undeveloped yet accessible lake proximate to Greenville with high-value boating and fishing resources; the east shore of Upper Wilson Pond, another high-value boating and fishing area proximate to Greenville; as well as on a number of remote ponds. In this regard, Plum Creek witness John Daigle testified before the Commission that, "The current Plan has eliminated development along many lakes and ponds, and in fact preserves them as remote water areas for primitive recreation."¹⁷²

Such prospective development siting decisions made possible by the Concept Plan are difficult to achieve under existing zoning in light of its reactive, incremental and haphazard approach to the location of development. In this regard, the Commission agrees with the following comments provided to it by the COALITION:

The concept plan locates development on six water bodies ... in the [OSI] baseline, development is located on 25 water bodies. More than 100 miles more shorefront protection is included in the concept plan than under the baseline development scenarios. There is no development of Prong Pond in the concept plan. The [OSI] baseline development scenario show shorefront development on Prong Pond ... The concept plan has less development on Indian Pond than that projected in the [OSI] baseline. In fact, the shorefront development on Indian Pond is miniscule in the concept plan.¹⁷³

¹⁷² Plum Creek: Daigle, Aug. 31, 2007 filing, p. 6.

¹⁷³ COALITION, Mar. 7, 2008 filing, pp. 4-5.

In addition, the Concept Plan contains new land use standards and required review processes not contained in existing zoning that will avoid and minimize impacts to existing recreational and scenic resources and outdoor recreational activities. For example, the Concept Plan contains strict new land use standards and review processes to avoid and/or minimize the scenic impacts of development and docks on shores in development areas, and minimize foot and vehicular access points to waterfront locations in development areas. And new requirements in the long-term development plan, approval of which is required by the Commission before any development can occur in most development areas, ensures that much of the outdoor recreational demand attributable to the Concept Plan will remain focused within the development area itself, so as not to overburden existing popular recreational areas.¹⁷⁴

(c) *The Conservation Easements Offer Greater Scenic And Recreational Resources Protections Than Existing Zoning*

Under the Concept Plan, the areas containing high-value recreational and scenic resources on which the Commission has determined that no development should occur are not left vulnerable to future development proposals, as they would be with existing zoning, but instead are protected forever from residential development pursuant to the terms of the MRCE and RCE. Existing zoning does not offer such permanence.

(7) **Conclusions**

For the reasons set forth *supra*, the Commission finds that the Concept Plan offers far greater protection for the principal values of the jurisdiction, better achieves the specific goals and policies of the CLUP, and significantly furthers the Commission's vision for the jurisdiction, than do the existing district designations. Therefore, the Commission concludes that the Concept Plan and the associated P-RP Subdistrict are more appropriate for the protection and management of existing uses and resources within the affected area than are the existing district designations.

¹⁷⁴ See paragraph 9.E.(1) for further details regarding the Commission's finding regarding how the Concept Plan avoids, minimizes and mitigates impacts to existing recreational resources and uses.

D. The Proposed Land Use District Satisfies A Demonstrated Need In The Community Or Area (12 M.R.S.A. § 685-A(8-A))

This section addresses the Commission’s determination with respect to whether the Concept Plan and associated P-RP Subdistrict satisfies a “demonstrated need in the community or area” (12 M.R.S.A. § 685-A(8-A)).¹⁷⁵ In evaluating the Concept Plan in light of this criterion, the Commission draws upon certain policy statements in its CLUP and, as appropriate, the Commission’s “demonstrated need” guidance document.¹⁷⁶

The CLUP states that the criterion of demonstrated need “is aimed at assuring that the rezoning is truly necessary and not overly speculative.”¹⁷⁷ This criterion recognizes that most land in the Commission’s jurisdiction is zoned based on existing land use patterns, rather than prospective (future) land use needs, that there is no fixed boundary that confines requests to rezone for development, and that typical rezoning decisions to allow development are case-by-case and inherently reactive.¹⁷⁸ The demonstrated need criterion, in concert with related policies (such as the adjacency criterion) within the Commission’s traditional zoning framework, serves to hold back or slow the outward spread of development in order to assure that the jurisdiction’s principal values are not incrementally eroded absent a need that will serve the community or area.

To help objectify the meaning of the demonstrated need criterion, the CLUP calls for, and the Commission has provided, guidance to staff and petitioners on what is expected in order to show “demonstrated need” in a rezoning petition.¹⁷⁹ The guidance lists a series of evaluation factors for residential and non-residential projects by which the demonstrated need criterion can be judged when evaluating petitions to rezone land to a development subdistrict. There is no threshold number of these factors that must be met or addressed. Rather, each factor may be an indicator for the Commission to use in weighing (along with other criteria) whether or not to approve a rezoning request.¹⁸⁰

More fundamentally, however, even as the CLUP seeks to clarify the meaning of demonstrated need to help manage case-by-case zoning petitions, it concludes that the current rezoning system has serious weaknesses. It diagnoses and discusses four of them, as noted in paragraph 9.C.:

¹⁷⁵ As explained in paragraph 9, 12 M.R.S.A. § 685-A(8-A)(B) sets forth alternative bases upon which land use district boundaries may be adopted or amended. Consequently, in some past concept plan decisions the Commission has not applied the “no undue adverse impact/demonstrated need” standard, and instead approved plans solely on the basis of the “more appropriate” standard. In this case, the Commission makes findings under both of these alternative standards.

¹⁷⁶ LURC: Apr. 1, 2004, Clarifying the Rezoning Criterion of “Demonstrated Need.”

¹⁷⁷ CLUP, 1997, p. 122.

¹⁷⁸ CLUP, 1997, p. 122.

¹⁷⁹ CLUP, 1997, p. 127; LURC: Apr. 1, 2004, Clarifying the Rezoning Criterion of Demonstrated Need.

¹⁸⁰ The Commission notes that these factors “are intended solely for guidance to Commission staff and petitioners... The Commission reserves the right to act in accordance with its statute, including in a manner that varies from this document.” (LURC: Apr. 1, 2004, Clarifying the Rezoning Criterion of Demonstrated Need, p. 3.)

- Exemptions to the LURC subdivision law, including the exemption known as the “two-in-five exemption,” which allows two lots to be created every five years from a single parcel or ownership within each township regardless of zoning district;
- A reactive approach to rezoning, based on where development exists as opposed to where development is most appropriate;
- A “one-size-fits-all” approach to rezoning that does not recognize local and regional differences, and
- The effect of unplanned infrastructure improvements on future land use patterns.¹⁸¹

With respect to the reactive approach to rezoning – an approach, as noted, that relies on looking at one or more evaluation factors to determine whether there is a need for the rezoning at hand – the CLUP states that this case-by-case approach “does not offer sufficient guidance to prospective developers as to the most appropriate and potentially approvable areas for development.” The CLUP continues: “While it was necessary as an interim approach to guiding growth in LURC’s early years, the case-by-case review of rezoning proposals is becoming ineffective as the principal tool for guiding growth.”¹⁸² The deficiencies of a reactive approach that is based on where development exists rather than where development is most appropriate are magnified in “high growth, high-value” areas, which the CLUP described as areas with special planning needs.¹⁸³ In such areas, the risk of haphazard, incremental development is great because the very adjacency criterion that was intended to constrain a spread-out, sprawling pattern of development into high-value resource areas becomes the justification for it.¹⁸⁴

Therefore, the CLUP seeks to shift zoning decisions in areas with special planning needs away from reactive, case-by-case zoning and toward prospective zoning. The CLUP also seeks to encourage long-range concept plans which, especially when undertaken at a regional scale, are a landowner-initiated form of prospective planning and zoning.¹⁸⁵ As with concept planning, prospective zoning pre-identifies areas appropriate for development, facilitates development within development zones, and limits the opportunity to rezone beyond these areas.¹⁸⁶ Under this type of zoning, “the areas most appropriate for future growth will be zoned as development districts, eliminating the need for most projects to go through the rezoning process,” including the case-by-case showing of demonstrated need based on the usual evaluation factors.¹⁸⁷

In the context of prospective zoning and concept planning, where long-term zoning boundaries replace reactive, case-by-case decisions, the Commission finds that the demonstrated need criterion takes on a different complexion. In prospective zoning, a key test of demonstrated need

¹⁸¹ CLUP, 1997, pp. 122-125.

¹⁸² CLUP, 1997, p. 124.

¹⁸³ CLUP, 1997, pp. 110-113.

¹⁸⁴ CLUP, 1997, p. 124.

¹⁸⁵ CLUP, 1997, pp. 126-128, 140-141, C5-C6.

¹⁸⁶ CLUP, 1997, p. 126.

¹⁸⁷ CLUP, 1997, pp. 122, 127.

is whether trends show that an area with high-value resources is also in the path of growth: if high rates of growth threaten the high-value natural and recreational resources of an area, the need to rezone prospectively to direct development to appropriate locations, achieve a long-term balance of development and conservation, and protect the area's high-value resources is *per se* demonstrated. "The challenge for the Commission is to allow growth to be accommodated in these areas without compromising the resources that make them so special. Balancing development and conservation in these areas is the key to maintaining their high values, particularly their recreational appeal."¹⁸⁸ Such forward-looking rezoning, with its pre-identified, bounded areas of growth, is intended to relieve high growth, high-value areas from the impacts of haphazard, incremental development with greater certainty than is possible in a reactive zoning scheme.¹⁸⁹

The Commission finds that the record evidence allows evaluation of demonstrated need in terms of both prospective zoning and the evaluation factors in the Commission's guidance document on demonstrated need. Below, the Commission sets forth its findings and conclusions with respect to each of these approaches.

(1) **The Concept Plan Satisfies A Demonstrated Need Per The Prospective Zoning Approach**

The CLUP identifies the Moosehead Lake region as a high growth, high-value area with special planning needs that is ripe for prospective zoning. It recognizes that "Maine's largest lake is the attraction for development in this high growth area," and that the region is accessible by both State routes and well-maintained private roads. Further, it identifies several towns and townships within the region that are high growth communities and account for most of the region's development, including the Town of Beaver Cove, Harford's Point Township, Lily Bay Township, Rockwood Strip Township, and Tomhegan Township.¹⁹⁰ As a result, the CLUP targets the entire Moosehead Lake area for prospective zoning.¹⁹¹

The Commission finds that the CLUP's conclusion concerning the inadequacy of reactive zoning in the jurisdiction – that the Commission's "largely reactive approach to rezoning and the limitations of the adjacency criterion as it is now applied" will be a "major obstacle" in attaining the vision of the jurisdiction¹⁹² – applies to the Moosehead Lake region specifically, where from 1972 to 2004 more than 1,100 building permits for new dwellings were scattered across 41 minor civil divisions in the Moosehead Lake region,

¹⁸⁸ CLUP, 1997, p. 113. The prospective zoning plan for the Rangeley Lakes region, which, like the Moosehead Lake region, was identified as a high priority "area with special planning needs," recognized that the criterion of demonstrated need had to be treated differently in this context than in case-by-case re-zonings: "The challenge of planning is to shape the course of development toward a desired outcome rather than merely to respond to demand and development pressures." (LURC: Jan. 1, 2001, Prospective Zoning Plan for the Rangeley Region," p. 20.)

¹⁸⁹ CLUP, 1997, p. C6.

¹⁹⁰ CLUP, 1997, pp. 110-111.

¹⁹¹ CLUP, 1997, pp. 119, 126, 140-141.

¹⁹² CLUP, 1997, p. 134.

including sixteen townships within the Plan Area.¹⁹³

By virtue of designating the Moosehead Lake region as an area with special planning needs, the Commission finds that the CLUP establishes that the demonstrated need in the region is for long-term zoning that is (i) prospective (i.e. forward-looking); (ii) avoids haphazard, incremental development; (iii) based on appropriate locations of development, and (iv) strikes a balance between development and conservation. The Commission finds that this is true for the Moosehead Lake region as a whole, for the individual towns or townships in the Plan Area that have borne the majority of the region's past development pressures (such as Lily Bay, Rockwood Strip, and Beaver Cove), and for the shores of lakes and ponds within and nearby the Plan Area which are among the resources most susceptible to advancing development. Further, the Commission finds, as encouraged by the CLUP, that a concept plan can be an appropriate tool for meeting this demonstrated need in the area, as long as it is of a sufficient term and geographic scope and meets other governing review criteria.

The Commission finds that the Concept Plan is a long-range planning and zoning scheme that encompasses a substantial geographic portion of the Moosehead Lake region, including all of the region's high-growth towns and townships. Further, the Commission finds that the Concept Plan complies with all other governing review criteria – in particular, it is consistent with the CLUP, is more appropriate for the protection and management of existing uses and resources, has no undue adverse impact on existing uses and resources, and satisfies the criteria for approval for a P-RP Subdistrict¹⁹⁴ – thereby assuring that this planning and zoning scheme permanently avoids haphazard and incremental development, appropriately locates development, and strikes an appropriate balance between development and conservation. Therefore, the Commission concludes that the Concept Plan satisfies a demonstrated need in the region.

(2) **The Concept Plan Satisfies A Demonstrated Need Per The Evaluation Factors In Case-By-Case Rezoning**

While the competing demands of development and conservation in high growth, high-value areas themselves constitute a compelling demonstrated need for long-term, region-wide zoning, Plum Creek and a number of other parties addressed several of the evaluation factors that are considered in parcel-by-parcel, reactive petitions for rezonings of land to development subdistricts. These factors include, by way of example: community support, economic benefit, compatibility with community character, availability of vacant lots/units, housing affordable to local residents, impact on community services, support for the forestry industry, and support for natural resource-based outdoor recreation industry. While the Commission considers the designation of an area with special planning needs to be determinative on the question of demonstrated need for prospective zoning proposals, including for this Concept Plan as set forth above, it also has carefully reviewed record evidence relating to these evaluation factors.

¹⁹³ Petition, Apr. 15, 2005, Petition for Rezoning, p. 9 and map following.

¹⁹⁴ See paragraphs 9.B., 9.C., 9.E., and 9.F., respectively.

Examples of the record evidence on several of the evaluation factors are summarized as follows:

(a) *Community Support:*

The record shows general support for a regional plan that provides for orderly, limited growth within the Moosehead Lake region, but division among the public in both the Moosehead Lake region and statewide on the details of the Concept Plan. At the issues scoping sessions in August 2005 and the public hearings in December 2007 and January 2008, there were both ardent supporters and ardent opponents of the Concept Plan. Intervenor and Interested Persons in the proceeding represented organizations both supporting and opposing the Concept Plan as well as organizations that were not opposed but sought improvements to it. Some elected officials who chose to participate as interested parties or in public hearings did not express an opinion but appeared solely in order to present information on capacity to serve the proposed development; some, including county commissioners from Piscataquis and Somerset Counties, expressed support, while other elected officials who testified at hearings included both proponents and opponents.

Some parties from within the region asserted that a majority of the residents of the area supported the Concept Plan,¹⁹⁵ while others asserted that their research found consensus around an approach that scaled back and relocated some of the development, as represented, for example, by a Citizens Solutions Map.¹⁹⁶

The Commission received thousands of letters and e-mails from the public that covered the spectrum from strong support to strong opposition, either to the Concept Plan as a whole or to specific elements, such as the proposed development at Lily Bay. Regarding e-mails and letters received following certain deliberative sessions of the Commission, there were significantly more opponents than supporters, an observation that MA-NRCM argued should be taken into account:

In a rule-making proceeding, where LURC exercises its quasi-legislative function of prospective planning and setting new land use district boundaries, the objective, measurable weight of public comment is key. The written public record demonstrates overwhelming opposition to rezoning for development at Lily Bay.¹⁹⁷

On the other hand, the MSCC warned that, while the Legislature has delegated zoning power to the Commission, it must base its decisions on clear standards¹⁹⁸ and that the decision is not comparable to that of “a design committee engaged in

¹⁹⁵ See, e.g., SEDC: Batey, Aug. 31, 2007 filing, p. 2.

¹⁹⁶ MRFC: Glavine, Aug. 31, 2007 filing, Exhibits 1, 2, and 3; MRFC, Mar. 7, 2008 filing p. 19.

¹⁹⁷ MA-NRCM, Jul. 11, 2008 filing, pp. 13-14.

¹⁹⁸ MSCC, Mar. 21, 2008 filing, pp. 2-8.

a joint exercise at the end of which nothing can occur without a unanimous vote.”¹⁹⁹

In reaching its conclusions with respect to the Concept Plan, including the demonstrated need criterion, the Commission has taken into account all public comments and testimony it received. While there exists both strong public support for and strong public opposition to the Concept Plan as a whole, as well as to specific parts of it, the Commission finds that this evaluation factor by itself does not determine the Commission’s conclusions with respect to whether a proposal meets a demonstrated need. The Commission notes that while broad community support for a proposal is a general indication of demonstrated need for a rezoning, a split community as in this case (or even outright opposition) does not necessarily mean that there is not a demonstrated need. (For example, if the Commission were to interpret community opposition alone as preventing a finding of demonstrated need, rezoning for controversial but socially beneficial projects like landfills or subsidized housing projects could rarely be approved.) In these cases, it is especially important to consider other evaluation factors, to which the Commission now turns.

(b) *Compatibility With Community Character:*

Evaluation of this factor by parties implicitly or explicitly fell into two broad categories:

The first category involved assertions that the character of the region is inextricably bound up with traditional access to a large forested area for traditional recreation, including hunting, fishing, snowmobiling, hiking, and other recreational pursuits. As discussed extensively in paragraph 9.C., the Commission agrees with a number of parties²⁰⁰ who argued that the Concept Plan will preserve this distinctive characteristic of the region, and that such access would be threatened in the future in the absence of a Concept Plan with provisions to protect it. Therefore, the Commission finds a demonstrated need for the rezoning to protect community character.

The second category involved comments about how certain development components would affect the existing character of specific places, most notably the Lily Bay and the Rockwood areas. The Commission responds to the issue of impacts to natural character and its relationship to the locations of development areas in paragraph 9.B. Attention to these two specific areas are found in paragraphs 9.B.(8) and 9.B.(9). As set forth in these paragraphs, the Commission finds that the existing character of these specific places will not be unduly compromised.

¹⁹⁹ MSCC, Mar. 21, 2008 filing, p. 28.

²⁰⁰ See, e.g., ATVM: Kleiner, Aug. 31, 2007 filing, p. 4; ATVM: Myers, Aug. 31, 2007 filing, p. 10; ATVM: Rust, Aug. 31, 2007 filing, p. 8; COALITION: McCormick, Aug. 31, 2007 filing, pp. 1-3; COALITION: Legere, Aug. 31, 2007 filing, p. 1.

(c) *Economic Benefit:*

Much of the record's debate on demonstrated need revolved around the economic benefit of the Concept Plan. For example, economic benefit was at the heart of Plum Creek's assertion that the Concept Plan addresses a demonstrated need. It argued that "Piscataquis and Somerset counties generally, and the Greenville and Rockwood areas specifically, are in deep economic trouble and in need of revitalization"; and that "bleak economic conditions have taken their toll on the area's businesses, schools, and government agencies."²⁰¹ Plum Creek's economic impact analysis projected that over the 25 years following the initiation of construction, employment would grow by an annual average of 685 jobs over the four-county region associated with the Plan Area, by \$23.1 million per year increase in wages, and by a population of 480 per year.²⁰² A number of parties in support of the Concept Plan testified to the urgency of economic development in the region.²⁰³ Plum Creek and its experts asserted, *inter alia*, that the Concept Plan will create jobs and income for the region and will produce a positive cost-benefit return, with conservation and recreational benefits that will exceed the costs to natural resources caused by Concept Plan development.²⁰⁴

Plum Creek and its experts asserted that the Concept Plan will revitalize the tourist economy.²⁰⁵ Other parties noted that the Concept Plan would allow greater recognition of the tourism and vacation heritage of this part of the State and make it easier to achieve the economies of scale necessary to balance this type of development and resource management.²⁰⁶

Plum Creek and its experts presented analyses that concluded there is a market demand for both the residential and the resort elements of the Concept Plan, that the resorts are essential destination anchors to re-stimulate the tourist economy, and that without the types of investment proposed by Plum Creek, the tourism economy in the region will be flat to declining.²⁰⁷ They identified the adjacent expanse of conservation land as a key attraction for the resorts and argued that two resorts, one mountain-oriented at Big Moose Mountain and one lake-oriented at Lily Bay, would create critical mass and would address complementary markets.²⁰⁸ Finally, they described the combination of resorts and second homes

²⁰¹ Plum Creek, Mar. 7, 2008 filing, p. 1.

²⁰² Plum Creek: Colgan, Aug. 31, 2007 filing, p. 4 and full report at Exhibit B.

²⁰³ See, e.g., SEDC: Duplessis, Aug. 31, 2007 filing, p. 1; COALITION: Watts, Aug. 31, 2007 filing, p. 3; COALITION: DuMont, Aug. 31, 2007 filing, pp. 1-2; COALITION: Sinclair, Aug. 31, 2007 filing, p. 1; COALITION: Walden, Aug. 31, 2007 filing, pp. 1-2; COALITION: Gould, Aug. 31, 2007 filing, pp. 1-2.

²⁰⁴ Plum Creek: Stratus, Aug. 31, 2007 filing; Plum Creek: Freeman, Aug. 31, 2007 filing, pp. 2-8.

²⁰⁵ See, e.g., Plum Creek: Fichtner, Aug. 31, 2007 filing, p. 1; Plum Creek: Stinson, Aug. 31, 2007 filing, p. 8; Plum Creek: Morton and Lindahl, Aug. 31, 2007 filing, pp. 10-11; Plum Creek: Vail, Aug. 31, 2007 filing, pp. 3-4.

²⁰⁶ See, e.g., MSCC: Sanford, Aug. 31, 2007 filing, p. 11; MSCC: Packer, Aug. 31, 2007 filing, pp. 10-12.

²⁰⁷ Plum Creek: Warnick, Aug. 31, 2007 filing, Exhibit 2; Plum Creek: Philips, Aug. 31, 2007 filing, pp. 1-4 and Attachment 2.

²⁰⁸ Plum Creek: Tinson and DeMay, Aug. 31, 2007 filing, pp. 3-8.

as synergistic, with the resorts providing amenities that seasonal homeowners seek.²⁰⁹

Several parties disputed the economic benefit analysis generally and the economic benefits of the proposed resorts specifically, especially at Lily Bay. They urged the Commission to give no weight to Plum Creek's economic impact analyses because the analyses used untested, "inflated" assumptions and did not include any sensitivity analyses in the event the assumptions do not materialize.²¹⁰ They described Plum Creek's showing of demonstrated need as "ambiguous and speculative," lacking the detail necessary to know whether the resorts will produce the claimed benefits or even whether they will be built.²¹¹ They worried that the resorts are illusory and will evolve only as high-end residential, second home subdivisions without the projected economic benefits.²¹²

MRFC witness Sandra Neily criticized Plum Creek's research and conclusions, arguing that the research amounted to little more than statistical calculations applied to unproven market segments, and that, to the extent that their experts' projections of revenues and other economic benefits were based on that research, they are equally flawed.²¹³ The Commission acknowledges that Plum Creek's market research is based on a number of as-yet untested assumptions and therefore is inherently speculative in nature, but also finds that Plum Creek's observations about the growth in the pre-retiree and retiree market segments in the Northeastern United States and Canada and the potential demand that these segments exert for a certain type of seasonal home and resort accommodations in markets such as the Moosehead Lake region to be credible. The Commission further finds that even if the Concept Plan's development does not produce all of the economic benefits calculated, the economic effects it does produce are likely to be positive and will therefore, to a greater or lesser extent, likely help to meet a demonstrated economic need in the region.

MA-NRCM witness Costas Christ warned that the Concept Plan lacked sustainable tourism guidelines and that, in their absence, the plan would fail to create a world class tourism destination and "may even backfire, becoming a model of tourism gone wrong and not tourism planned right, with serious economic implications for a negative market backlash." He argued for a scaled-back, reconfigured version of the plan.²¹⁴ The Commission notes that the Concept Plan's D-MH-RT zone incorporates certain safeguards to assure that as resort development areas are built out, nature-based resort activity will be part of

²⁰⁹ Plum Creek: Tinson and DeMay, Aug. 31, 2007 filing, pp. 3-8; Plum Creek: Philips, Aug. 31, 2007 filing, p. 4.

²¹⁰ MA-NRCM: Philips, Aug. 31, 2007 filing, pp. 5-14; MA-NRCM, Mar. 21, 2008 filing, pp. 16-20.

²¹¹ MA-NRCM, Mar. 7, 2008 filing, pp. 33-37; FEN-RESTORE, Mar. 7, 2008 filing, pp. 7-11.

²¹² FEN-RESTORE, Mar. 7, 2008 filing, p. 8; MA-NRCM, Mar. 7, 2008 filing, p. 34.

²¹³ MRFC: Neily, Aug. 31, 2007 filing, pp. 5-10.

²¹⁴ MA-NRCM: Christ, Aug. 31, 2007 filing, pp. 8-11.

the mix;²¹⁵ and concludes that, with many of the areas with nature tourism potential (as identified, e.g., by MRFC on its Citizens Solutions Map²¹⁶) subject to the MRCE or RCE and protected from most development with guaranteed public access, the opportunity for nature tourism is preserved.

(d) *Support For The Forestry Industry:*

Based on the record evidence, the Commission finds that the Concept Plan will assure that two of the greatest threats to the forestry industry – parcelization of the forest into smaller and less economic units, and fragmentation of the forest by development – will be alleviated by the Concept Plan. The Commission therefore finds that the Concept Plan satisfies a demonstrated need to support forestry.²¹⁷

(e) *Support For The Natural Resource-Based Outdoor Recreation Industry:*

The record evidence indicates that the Concept Plan will result in significant net benefits for the natural resource-based outdoor recreation industry.²¹⁸ While some elements of the industry may be placed at disadvantage if landscape changes resulting from Concept Plan development displaces them from areas they have used to serve clients seeking primitive recreational experiences, other areas providing comparable recreational infrastructure and user experiences within and surrounding the Plan Area will be permanently conserved, and access to them permanently guaranteed. Further, the terms of the MRCE state explicitly that permanent access includes use of the protected property by commercial guides and by customers of backcountry huts, campgrounds, remote rental cabins, and commercial sporting camps. For these reasons, the Commission finds that the Concept Plan satisfies a demonstrated need to protect the recreational and scenic resources upon which the outdoor recreation industry depends.

(f) *Availability Of Vacant Lots/Units:*

MA-NRCM submitted data on lots on the market and argued that with 146 undeveloped lots and 165 lots with residential structures for sale (at that time, in August 2007) in Greenville, Beaver Cove, and the unorganized portions of Piscataquis and Somerset Counties, including shorefront lots, “there does not appear to be any demonstrated need, let alone market, for adding thousands of undeveloped lots and accommodation units....”²¹⁹ This argument was reiterated later in the proceeding when the economy was in recession:

²¹⁵ Concept Plan, Sep. 23, 2009, Sec. II, Sub-Ch. II, 10.21.M.

²¹⁶ MRFC: Glavine, Aug. 31, 2007 filing, Exhibit 2.

²¹⁷ See paragraph 9.C.

²¹⁸ The likelihood of adverse impact to scenic and recreational resources and uses upon which the outdoor recreation industry depends in the absence of a Concept Plan are more fully considered in paragraphs 9.C. and 9.E.(1).

²¹⁹ MA-NRCM: Johnson, Aug. 31, 2007 filing, p. 29.

At the time of the hearing of this matter, and at the time of this Commission's deliberations and preliminary ruling on Plum Creek's Rezoning Petition ZP 707, no one could have imagined the decline in the housing market. The decline was never predicted by any of the economists at the hearing – reinforcing the point made by the undersigned and many other intervenors on the deficiency of the economic analysis presented by Petitioner as the basis for any regulatory decisionmaking. This issue compels this Commission to re-evaluate this Concept Plan and reduce the overall scope and intensity of development it proposes, because there is no demonstrated need for that overall scope and intensity.²²⁰

Plum Creek did not in its testimony address the question of vacant, available lots and units at this current point in time, but rather focused on potential market demand over the thirty-year life of the Concept Plan. It presented evidence that as the baby boom generation approaches retirement, it is driving increased demand for second homes with access to outdoor recreation and for planned resorts that are experiential and based on quality of place; and that the “drive-to” market area will extend south to New York and New Jersey and northwest to Quebec. It projected 20-year capturable market demand from among 55+ year old buyers of about 1,500 to 3,300 residential units.²²¹

The Commission finds that in the context of a long-term plan such as this Concept Plan, consideration of long-term trends in potential demand is appropriate and certain long-term demographic trends within the region upon which the Moosehead Lake region may draw do tend to favor development of the kinds included in the Concept Plan.

(g) *Housing Affordable To Local Residents:*

The record evidence is that housing affordable to local residents in the Moosehead Lake region is an existing problem.²²² According to the Maine State Housing Authority (“MSHA”), this problem is likely to be exacerbated by the Concept Plan unless specific provisions are made to address it.²²³ The Concept Plan addresses this need through the donation of 100 acres of land for affordable housing, one or more loans of \$1.75 million to Coastal Enterprises, Inc., or other qualified organization to create affordable housing, and the establishment of the AHF to help subsidize construction of affordable housing in the Moosehead Lake region pursuant to a memorandum of understanding with the MSHA.²²⁴

²²⁰ MA-NRCM, Apr. 6, 2009 filing, p. 2.

²²¹ Plum Creek: Philips, Aug. 31, 2007 filing, Attachment 2; *see also* Plum Creek: Warnick, Aug. 31, 2007 filing.

²²² Plum Creek: Finnegan and Phillips, pp. 5-7 and Attachment D (Greenville at the Crossroads).

²²³ MSHA, Aug. 31, 2007 filing.

²²⁴ Concept Plan, Sep. 23, 2009, Sec. I.

(h) *Impacts On Community Services:*

The record evidence on this evaluation factor, which is separately discussed in paragraph 9.E.(3), demonstrates that the Concept Plan will not create undue adverse impact to community services, and that the tax revenues generated by the Concept Plan's development will generate tax and user fee revenues that meet or exceed the costs of services demanded.

(3) **Conclusions**

With respect to evaluating whether the Concept Plan will satisfy a demonstrated need per the prospective zoning approach, the Commission finds that (i) the Moosehead Lake region generally and several specific minor civil divisions that have accounted for a majority of the development in the region are areas with special planning needs, (ii) the region's past and potential future high rates of growth threaten its high-value resources, and (iii) the CLUP establishes that the demonstrated need in the region is for long-term, prospective (i.e. forward-looking) zoning and planning. By virtue of its term, its geographic scope and specific provisions that direct development to appropriate locations, achieve a long-term balance of development and conservation and protect high-value resources, the Commission concludes that the Concept Plan satisfies this regional demonstrated need.

With respect to evaluating whether the Concept Plan will satisfy a demonstrated need in light of the evaluation factors that the Commission weighs in case-by-case development rezoning proposals, the Commission concludes that:

- The record provides substantial, credible evidence that the Concept Plan will support the forestry industry in the region;
- The record provides substantial, credible evidence that the Concept Plan will support the natural resource-based outdoor recreation industry in the region;
- While the extent to which the Concept Plan results in actual gains in jobs and income is inherently speculative, the record contains substantial credible evidence that there will be some gains, and appropriate provisions have been incorporated into the Concept Plan to assure that job-generating elements of the plan – in particular nature-based resort development with resort cores – are not pre-empted by other uses which are unlikely to result in such gains;²²⁵
- Traditional access to outdoor recreation in a large, forested landscape is a key factor that defines the character of the region, and the Concept Plan will perpetually maintain both this contributing element of the region's character and the public access to it;

²²⁵ For example, the Concept Plan defines nature-based resort development, incorporates such development as the purpose of the Resort Development (D-MH-RT) zone, and incorporates unit sequencing requirements that prevent D-MH-RT zones from developing without bona fide resort cores and the hospitality and recreational services with which permanent jobs are most likely to be associated.

- The question of market demand for the development in a Concept Plan, if relevant at all in the context of such a long-term zoning proposal,²²⁶ is more appropriately considered in terms of long-term market forces than in terms of a short-term snapshot of existing conditions, and the record contains substantial credible evidence that demographic trends that will be unfolding over the thirty-year term of the Concept Plan (such as the full entry of the baby boom generation in the metropolitan northeast into pre-retirement and early retirement years) will create demand for seasonal and resort accommodations of the kind proposed in the Concept Plan;
- The Concept Plan appropriately takes responsibility for and addresses affordable housing needs that will be generated by the proposed development, and does so in a proactive and commendable manner atypical of other development proposals in the jurisdiction; and
- Other evaluation factors are embedded in other findings under other sections of this document (e.g., evaluations of impact on existing resources and uses).

To the extent that it is important that the factors evaluated herein contribute to a finding of demonstrated need within a region where the primary need is for long-term, prospective zoning and planning that appropriately locates and balances development and conservation, the Commission finds that they are sufficient to do so.

²²⁶ Where development subdistricts are both appropriately located and permanently bounded, concern about whether the development proposed within these subdistricts proceeds slowly or is not built out at all due to lack of demand is at least less relevant than in a reactive zoning scheme where the new zoning becomes a jumping off point for future rezoning requests, and it may be moot.

E. The Proposed Land Use District Has No Undue Adverse Impact On Existing Uses Or Resources (12 M.R.S.A. § 685-A(8-A)(B))

In this section the Commission addresses whether the change in zoning will cause undue adverse impact to existing uses or resources, and concludes that it will not.

In assessing the Concept Plan in light of this statutory rezoning criterion, the Commission evaluated the existing uses and resources located within the Plan Area and, depending on the use or resource that might be impacted, extended the geographic range of its evaluation beyond the Plan Area. In evaluating whether impacts attributable to the Concept Plan are unduly adverse, the Commission reviewed and evaluated extensive testimony and comments filed by parties, governmental review agencies and members of the public covering a broad range of topics, including the effects of the proposal, *inter alia*, on (i) scenic resources within and surrounding the Plan Area, including lake shores, scenic hillsides and mountains, and public roadways; (ii) recreational resources and uses, including adjoining FERC-licensed areas, commercial sporting camps, primitive recreational pursuits such as hiking and paddling, and motorized recreational pursuits such as snowmobiling and all-terrain vehicle (“ATV”) riding; (iii) wildlife and plant resources, including riparian habitat, wildlife travel corridors, natural plant communities, Canada lynx, whitetail deer, waterfowl and wading birds, forest song birds, bald eagles, loons, salmon, wild brook trout, and wood turtles; (iv) water quality and quantity; (v) cultural, historical and archaeological resources; (vi) soils and wetlands resources; and (vii) community services such as waste management, fire protection and emergency services, law enforcement, education, housing affordability, and other governmental services. The Commission also sought out and obtained information, including specific impact assessments, from Plum Creek and its consultants, governmental review agencies with expertise in natural and cultural resources protection and management, and its own independent consultants whom the Commission retained to assist it with its evaluation of scenic and recreational resources impacts. The Commission held nine full days of cross examination and questioning of witnesses and governmental review agency representatives on specific topics relevant to natural and cultural resources and uses and impacts thereto.

In reaching its conclusions regarding the Concept Plan’s impacts on existing resources and uses, the Commission carefully evaluated all record evidence, much of which is summarized in the paragraphs below.²²⁷ Where the Commission found credible evidence of potential undue adverse impacts to existing uses and resources from the Concept Plan as proposed by Plum Creek, the Commission engaged in a tiered, three-part process to ensure that the Concept Plan, as finally amended by the Commission, would have no undue adverse impact on existing uses or resources. Specifically, for each resource and use for which such credible evidence existed, the Commission first amended the Concept Plan so as to avoid such adverse impact where possible. Then, the Commission made changes to the Concept Plan to minimize any remaining adversity caused by allowed Concept Plan activities. Finally, for impacts that could not reasonably be avoided or minimized, the Commission ensured that there was sufficient comparable mitigation such that no impact was actually unduly adverse.²²⁸ Furthermore, because the rezoning granted in the Concept Plan does not imply or guarantee LURC approval of any specific development

²²⁷ Complete information on these and other natural and cultural resources and uses issues are contained in the administrative record.

²²⁸ This three-part approach is comparable to that recommended by the US FWS in its comments. (See US FWS: Sep. 17, 2007 filing.)

proposed within the Plan Area pursuant to this rezoning,²²⁹ the Concept Plan establishes rigorous review processes, including in most circumstances long-term development plan approvals and subdivision and/or development permit approvals. These processes require detailed natural resource inventory submissions as part of each subsequent site-specific development review to further avoid, minimize and mitigate impacts of the Concept Plan on the natural and cultural resources and uses within and surrounding the Plan Area.

(1) **The Proposed Land Use District Has No Undue Adverse Impact On Existing Scenic Or Recreational Uses Or Resources**

In evaluating the Commission’s statutory rezoning criterion of “no undue adverse impact on existing uses and resources” as this criterion pertains to scenic and recreational resources and uses,²³⁰ the Commission notes the direct relationship between the scenic integrity of a landscape and the recreational setting.²³¹ Because of this, the record evidence, analyses and conclusions regarding the effects of the Concept Plan on scenic and recreational resources and uses are presented here together.

The Commission draws upon the following regulatory materials contained in the CLUP and the Commission’s rules for its evaluation:

- The principal value of “[d]iverse and abundant recreational opportunities, particularly for primitive pursuits.”²³²
- The Commission’s specific goals and policies pertaining to scenic resources, including the goal to “[p]rotect scenic character and natural values by fitting proposed land use activities harmoniously into the natural environment and by minimizing adverse aesthetic effects on existing uses, scenic beauty, and natural and cultural resources,” and policies to: (i) encourage concentrated patterns of growth to minimize impacts on natural values and scenic character; (ii) regulate land uses generally in order to protect natural aesthetic values and prevent incompatibility of land uses; (iii) protect the scenic values of shoreland, mountain, recreation, and other scenic areas; and (iv) regulate forestry activities in important recreational and scenic areas to protect aesthetic qualities.²³³

²²⁹ The record demonstrates that Concept Plan rezoning is not understood by Plum Creek or other parties as approval of any specific development project and that any such development proposals within the Plan Area must ultimately be judged on site-specific information submitted at the time of filing of permit applications, at which time the Commission will evaluate, *inter alia*, whether the proposal complies with the Commission’s “harmonious fit” criterion (Ch. 10.24 of the Commission’s rules).

²³⁰ The existing scenic and recreational resources and uses within and surrounding the Plan Area are generally described in paragraph 9.A., above.

²³¹ E.g., LURC: Palmer, Aug. 31, 2007, A Review of the Potential Visual Effects from Implementing the Proposed Concept Plan for Plum Creek’s Lands in the Moosehead Lake Region, pp. 14-16, 181-186.

²³² CLUP, 1997, p. 114.

²³³ CLUP, 1997, pp. 139-140.

- The Commission's specific goals and policies pertaining to recreational resources, including the goal to "[c]onserve and protect the natural beauty and unspoiled qualities of the waters, shorelands, mountains, plant and animal habitats, forests, scenic vistas, trails and other natural and recreational features in order to protect and enhance their values for a range of public recreational uses," and policies to: (i) protect remote, undeveloped and other significant recreational areas, including such areas around rivers and streams, trails, ponds and lakes, to protect their natural character for primitive recreational activities; (ii) encourage diversified, non-intensive, nonexclusive uses of recreational resources, (iii) promote a range of recreational opportunities; (iv) consider traditional sporting camps as recreational and cultural resources worthy of protection from incompatible development and land uses; (v) encourage intensive recreational facilities to locate or expand away from areas where there is a potential for conflict with existing uses, natural resources and other values of the jurisdiction; and (vi) encourage traditional outdoor recreation by working with landowners to conserve the natural resources of the jurisdiction and to enhance recreational opportunities.²³⁴

- The Commission's specific policies pertaining to water resources, including policies to: (i) protect the recreational and aesthetic values associated with water resources; (ii) conserve and protect lakes, ponds and rivers and their shorelands which provide significant public recreational opportunities; (iii) permit a reasonable range of development and land uses on lakeshores in order to accommodate a range of recreational opportunities; and (iv) encourage cooperative uses of public and private docks, water access points and boat launching sites.²³⁵

- The Commission's review standards for structures adjacent to lakes including whether the proposal will have an undue adverse impact on traditional uses, including non-intensive public recreation and sporting camp operations; whether the proposal will substantially alter the diversity of lake-related uses afforded within the region; and whether adequate provision has been made to maintain the natural character of the shoreland.²³⁶

- The lake-specific management classifications and scenic, fisheries and other resource values identified as significant or outstanding in the Commission's Wildlands Lakes Assessment for lakes within the Plan Area.²³⁷

- The Commission's existing land use standards pertaining to scenic character, lighting and vegetation clearing activities (Ch. 10.25,E,1, 10.25,F,2 and 10.27,B of the Commission's rules, respectively).

²³⁴ CLUP, 1997, p. 138.

²³⁵ CLUP, 1997, pp. 138-139.

²³⁶ Ch. 10.25,A of the Commission's rules.

²³⁷ Ch. 10, Appendix C, the Commission's rules.

Throughout the proceeding, members of the public raised concerns about the scenic and recreational impacts of the Concept Plan proposal.²³⁸ Parties also provided the Commission with detailed testimony and comments, including from professionals with considerable experience and expertise in scenic and recreational resources impact analysis, regarding whether the proposal will cause an undue adverse impact to existing scenic and/or recreational resources and uses.²³⁹ In addition, LURC retained the expertise of James F. Palmer and Mark W. Anderson to assist the Commission and its staff and consultants in understanding the issues surrounding scenic resources and the impacts from development, and in evaluating the potential impacts of the proposal to existing recreational resources and uses, respectively.²⁴⁰

Regarding Scenic Resources:

Potential impacts to scenic resources were considered during two days of adjudicatory hearings on January 15 and 16, 2008, when witnesses for Plum Creek, MA-NRCM, FEN-RESTORE, NFN, and LURC consultant James Palmer were subject to cross examination by parties and questioning by the Commission and its staff and consultants. Issues presented in prefiled testimony and comments, as well as during the adjudicatory hearings included, *inter alia*: (i) whether different scenic resource values existed across the Plan Area, and the utility and limitations of the ROS²⁴¹ as a tool for characterizing scenic values of landscapes;²⁴² (ii) the reasonableness of assumptions used by scenic experts in their analyses and visualizations;²⁴³ (iii) the scenic impacts of “view corridors” or otherwise clearing of vegetation to create views from development sites;²⁴⁴ (iv) the

²³⁸ For example, as early as during the August 2005 issues scoping sessions, members of the public raised questions related to scenic impacts (e.g., impacts of hillside development, docks and night lighting) and recreational impacts (e.g., impacts to traditional recreational pursuits such as hunting and fishing; impacts on existing commercial sporting camps; impacts on fishing experiences, particularly on the East and West Outlets and remote ponds; and effects on public access). (See LURC: Staff and Consultants, Oct. 31, 2005, Summary of Issues Related to the Plum Creek Concept Plan Proposal for the Moosehead Lake Region Presented to the Land Use Regulation Commission at the August 2005 Scoping Sessions and in Follow-up Written Submittals, pp. 9-10.)

²³⁹ E.g., Regarding scenic resources: FEN-RESTORE: Besaw, Aug. 31, 2007 filing; MA-NRCM: DeWan, Aug. 31, 2007 filing; MA-NRCM: DeWan, Nov. 20, 2007 filing; MA-NRCM, Dec. 19, 2008 filing; MRFC, Dec. 19, 2008 filing; NFN: Kniseley, Aug. 31, 2007 filing; Plum Creek: Allen, Jun. 15, 2007 filing; Plum Creek: Allen, Aug. 31, 2007 filing; Plum Creek: Allen, Nov. 21, 2008 filing. Regarding recreational resources and uses: AMC: Graff, Clish, and Kimball, Aug. 31, 2007 filing; AMC: Clish and Kimball, Nov. 20, 2007 filing; ATVM: Cole, Hill, Kleiner, Myers, Mitchell, and Rust, Aug. 31, 2007 filing; ATVM: Rust, Sep. 14, 2007 filing; ATVM: Rust, Nov. 20, 2007 filing; BPL, Nov. 20, 2007 filing; COALITION: Legere and McCormick, Aug. 31, 2007 filing; FEN-RESTORE: Lund, Mathieu, Randall and Spalding Aug. 31, 2007 filing; FEN-RESTORE: Spalding, Sep. 14, 2007 filing; FEN-RESTORE: Spalding, Nov. 20, 2007 filing; DAM OWNERS: Wiley and Clark, Aug. 31, 2007 filing; MA-NRCM: Christ, Aug. 31, 2007 filing; MDIFW-MNAP, Aug. 31, 2007, filing; MWGO: Cochrane, Fake, and Slater, Aug. 31, 2007 filing; Plum Creek: Daigle, Jun. 14, 2007 filing; Plum Creek: Daigle, Aug. 31, 2007 filing; Plum Creek: Sardon, Aug. 31, 2007 filing; SAM: Smith, Aug. 31, 2007 filing.

²⁴⁰ E.g., LURC: Palmer, Jan. 4, 2007, Review of the Proposed Concept Plan for Plum Creek’s Lands in the Moosehead Lake Region; LURC: Palmer, Dec. 19, 2008, Review of Field Tests and Desktop Analysis Conducted by Saratoga Associates; LURC: Anderson, Oct. 2006, Issues to be Considered in Estimating the Effects on Primitive Recreation of the Plum Creek Concept Plan for the Moosehead Lake Region; LURC: Anderson, Aug. 31, 2007, Review of Report by Dr. John Daigle.

²⁴¹ See paragraph 9.E.(1)(b)(i) for a discussion of the ROS and the values and limitations of its application to evaluating the impacts of the Concept Plan.

²⁴² E.g., Tr. Jan. 15, 2008, Vol. II, pp. 146-148, 198-200, 237-239, 254-259, 266-271.

²⁴³ E.g., Tr. Jan. 15, 2008, Vol. I, pp. 48-50, 55-66; Vol. II, pp. 230-234, 254-259.

²⁴⁴ E.g., Tr. Jan. 15, 2008, Vol. I, pp. 68-70, 127-128, 140-141.

scenic impacts of docks, moorings, and similar on-shore structures;²⁴⁵ (v) the effectiveness and enforceability of Plum Creek’s proposed back-lot standards;²⁴⁶ and (vi) the importance of the 266,000-acre Moosehead Legacy Conservation Easement to mitigating overall scenic impacts of proposed development.²⁴⁷ Recommendations made by witnesses to avoid, minimize and/or mitigate many of these scenic impact issues included:

- Focusing development in fewer areas rather than spreading it throughout the region on multiple lakes, and avoiding development in particularly sensitive areas such as Prong Pond, Little Brassua Lake and the northern half of Indian Pond;²⁴⁸
- Establishing standards for development located away from lake shores but with views of public waters (“back-lots”)²⁴⁹ that utilize vegetation to (i) interrupt the façade of buildings, provide a forested backdrop to buildings, and prevent the visibility of newly cleared ground area surrounding and down slope of a back-lot structure,²⁵⁰ and (ii) limit the area of visible façade, the area of visible cleared openings, and the amount of visible perimeter;²⁵¹
- Establishing standards for construction materials and building design such as building height, color, reflectivity, and lighting;²⁵²
- Establishing standards that protect ridgelines and address impacts from cleared openings associated with forest management activities occurring within development areas;²⁵³ and
- Ensuring professional oversight of the clearing of vegetation to reduce the likelihood of regulatory infractions by future homeowners.²⁵⁴

²⁴⁵ E.g., Tr. Jan. 15, 2008, Vol. I, pp. 109-113, 127-128; Vol. II, pp. 246-250.

²⁴⁶ E.g., Tr. Jan. 15, 2008, Vol. I, pp. 84-85, 93-95, 101-104, 107, 136-137; Vol. II, pp. 179-187, 277-279.

²⁴⁷ E.g., Tr. Jan. 15, 2008, Vol. II, pp. 153-155.

²⁴⁸ LURC: Palmer, Jan. 4, 2007, Review of the Proposed Concept Plan for Plum Creek’s Lands in the Moosehead Lake Region, pp. 27-34; Tr. Jan. 15, 2008, Vol. II, pp. 237-239.

²⁴⁹ LURC: Palmer, Jan. 4, 2007, Review of the Proposed Concept Plan for Plum Creek’s Lands in the Moosehead Lake Region, pp. 27-34; Tr. Jan. 15, 2008, Vol. II, pp. 237-239.

²⁵⁰ Plum Creek: Allen, Aug. 31, 2007 filing, pp. 29-30 and Exhibit D.

²⁵¹ LURC: Palmer, Dec. 19, 2008, Review of Field Tests and Desktop Analysis Conducted by Saratoga Associates.

²⁵² LURC: Palmer, Jan. 4, 2007, Review of the Proposed Concept Plan for Plum Creek’s Lands in the Moosehead Lake Region, pp. 27-34; Tr. Jan. 15, 2008, Vol. II, pp. 237-239; and LURC: Palmer, Dec. 19, 2008, Review of Field Tests and Desktop Analysis Conducted by Saratoga Associates.

²⁵³ LURC: Palmer, Jan. 4, 2007, Review of the Proposed Concept Plan for Plum Creek’s Lands in the Moosehead Lake Region., pp. 152-156; LURC: Palmer, Dec. 19, 2008, Review of Field Tests and Desktop Analysis Conducted by Saratoga Associates.

²⁵⁴ LURC: Palmer, Jan. 4, 2007, Review of the Proposed Concept Plan for Plum Creek’s Lands in the Moosehead Lake Region, pp. 27-34; Tr. Jan. 15, 2008, Vol. II, pp. 237-239.

Regarding Recreational Resources And Uses:

Potential impacts to recreational resources and uses were considered during two days of adjudicatory hearings on December 11 and 12, 2007, when witnesses for AMC, ATVM, COALITION, DAM OWNERS, FEN-RESTORE, MA-NRCM, MWGO, and SAM, along with witnesses for Plum Creek, representatives of BPL, and LURC consultant Mark Anderson were subject to cross examination by parties and questioning by the Commission and its staff and consultants. Issues presented in prefiled testimony and comments, as well as during the adjudicatory hearings, included, *inter alia*: (i) the appropriate framework for evaluating the Concept Plan's recreational impacts²⁵⁵ and the feasibility of recreation management in the Plan Area;²⁵⁶ (ii) the need for permanently guaranteed public and commercial recreational access, including vehicular access, and the acceptability of certain access-related conservation easement terms;²⁵⁷; (iii) the impacts of the proposal on recreational resources and uses in specific places, including the northern portion of Indian Pond and the East and West Outlets of the Kennebec River,²⁵⁸ the north shore of Long Pond and the southern peninsula of Brassua Lake,²⁵⁹ and at Lily Bay State Park or in Lily Bay;²⁶⁰ (iv) the impacts of the proposal on specific recreational activities, including snowmobiling and ATV riding²⁶¹ and fishing;²⁶² (v) the value of the proposed peak-to-peak, multi-day hiking trail system as opposed to day or loop hiking trails, and the need for enhanced easement terms to ensure that trail development and maintenance is feasible, trails are attractive to hikers, and public rights are permanently protected;²⁶³ (vi) the impacts of proposed development as it relates to FERC relicensing settlements or ongoing processes affecting Indian Pond, Brassua Lake and the East and West Outlets of the Kennebec River;²⁶⁴ and (vii) the organizational composition of the CSF and the appropriate use of its funds.²⁶⁵ Recommendations made by witnesses to avoid, minimize and/or mitigate many of these recreational impact issues included:

²⁵⁵ E.g., AMC: Clish, Aug. 31, 2007 filing, pp. 4-13; BPL, Nov. 20, 2007 filing, p. 8.

²⁵⁶ E.g., BPL, Nov. 20, 2007 filing, p. 9.

²⁵⁷ E.g., BPL, Nov. 20, 2007 filing, pp. 3-6, 7-8; MDIFW-MNAP, Aug. 31, 2007 filing, pp. 22-23.

²⁵⁸ E.g., AMC: Clish, Aug. 31, 2007 filing, pp. 14-19; MWGO, Aug. 31, 2007 filing, pp. 3-4, 9-10.

²⁵⁹ E.g., AMC: Clish, Aug. 31, 2007 filing, pp. 22-25.

²⁶⁰ E.g., AMC: Clish, Aug. 31, 2007 filing, pp. 19-22; MA-NRCM: Christ, Aug. 31, 2007 filing, Exhibit 1, pp. 8-12, 15, 31-53; MWGO, Aug. 31, 2007 filing, pp. 4, 10-11.

²⁶¹ E.g., ATVM: Cole, Jones, Kleiner, McCormick, Meyers, and Mitchell, Aug. 31, 2007 filing; BPL, Nov. 20, 2007 filing, p. 7.

²⁶² E.g., ATVM: Cole and Rust, Aug. 31, 2007 filing; COALITION: Legere, Aug. 31, 2007 filing; FEN-RESTORE: Lund, Aug. 31, 2007 filing; MDIFW-MNAP, Aug. 31, 2007 filing, pp. 19-21; MWGO, Aug. 31, 2007 filing, pp. 4-5; SAM: Smith, Aug. 31, 2007 filing.

²⁶³ E.g., AMC: Clish, Aug. 31, 2007 filing, pp. 25-31; and FEN-RESTORE: Spalding, Aug. 31, 2007 filing.

²⁶⁴ E.g., AMC: Kimball, Aug. 31, 2007 filing; AMC: Kimball, Nov. 20, 2007 filing; and DAM OWNERS: Wiley and Clark, Aug. 31, 2007 filing.

²⁶⁵ E.g., AMC: Clish, Nov. 11, 2007 filing, pp. 2-5; *see also* paragraph 7.D.(9).

- Eliminating development on the north shore of Long Pond and within the viewshed of Little Brassua Lake to protect existing primitive recreational experiences, including those associated with the Northern Forest Canoe Trail;²⁶⁶
- Removing development from the southeast shore of Indian Pond to address FERC requirements and reduce recreational use pressure on the pond;²⁶⁷
- Removing and/or scaling back the Lily Bay development area to reduce recreational use pressure on Lily Bay (the water body), Lily Bay State Park and other recreational resources;²⁶⁸
- Ensuring that the resorts contemplated for the Lily Bay and Big Moose Mountain development areas are not built in a manner that effectively makes them residential subdivisions, but rather are built in a manner that includes significant amenities and recreational facilities, thereby diversifying recreational opportunities;²⁶⁹
- Consummating the Conservation Framework, including the 266,000-acre Moosehead Legacy Conservation Easement and 29,500 acre fee sale of the Roaches Ponds Tract, and ensuring that the terms of the conservation easement guarantee the traditional access to these lands that the public has become accustomed to, including access for commercial guides;²⁷⁰
- Ensuring that the Concept Plan not only includes legal easements across the three proposed recreational trail systems (the ITS snowmobile trail, connection to the Mahoosucs-to-Moosehead trail, and peak-to-peak hiking trail), but also provides for the capacity and means to construct, operate and maintain these trails;²⁷¹
- Ensuring that the peak-to-peak hiking trail system is located and designed to be responsive to both current and future hiking needs;²⁷² and

²⁶⁶ E.g., AMC: Publicover, Aug. 31, 2007 filing, p. 16; MWGO, Aug. 31, 2007 filing, p. 3.

²⁶⁷ E.g., AMC: Publicover, Aug. 31, 2007 filing, pp. 15-16; MWGO, Aug. 31, 2007 filing, p. 4.

²⁶⁸ E.g., AMC: Publicover, Aug. 31, 2007 filing, p. 15; MWGO, Aug. 31, 2007 filing, p. 4; MA-NRCM, Mar. 7, 2008 filing, pp. 26-28; MRFC, Mar. 7, 2008 filing, pp. 5, 31-37.

²⁶⁹ E.g., AMC: Publicover, Aug. 31, 2007 filing, p. 8; LURC: Anderson, Aug. 31, 2007, Review of Report by Dr. John Daigle.

²⁷⁰ E.g., AMC: Publicover, Aug. 31, 2007 filing, pp. 24-26; MWGO: SLATER, Aug. 31, 2007 filing, pp. 12-13; LURC: Anderson, Aug. 31, 2007, Review of Report by Dr. John Daigle; BPL, Aug. 31, 2007 filing.

²⁷¹ E.g., AMC: Clish, Aug. 31, 2007 filing; LURC: Anderson, Aug. 31, 2007, Review of Report by Dr. John Daigle.

²⁷² E.g., AMC: Clish, Aug. 31, 2007 filing; FEN-RESTORE: Spalding, Aug. 31, 2007 filing.

- Ensuring that more active and integrated management of recreation occurs to address known deficiencies in existing regional recreational infrastructure (e.g., improving the Rockwood public boat launch, creating signage and maps) and/or develop new infrastructure to accommodate potential increases in demand (e.g., trailhead parking, public boat launches) to reduce use conflicts.²⁷³

The testimony and comments filed by members of the public, parties and governmental review agencies were the basis for numerous amendments to the Concept Plan by the Commission. These amendments, which are consistent with many of the recommendations summarized above, serve to avoid, minimize and mitigate adverse impacts to scenic and recreational resources and uses. While the Commission did not accept all of these recommendations, it amended the Concept Plan where it found that the Concept Plan would otherwise cause undue adverse impact to scenic and/or recreational resources or uses. For example, the Commission did not accept certain parties' recommendations to require a recreational management plan for the Plan Area, nor to fund such an endeavor through the CSF, which had been previously proposed by Plum Creek. The Commission finds that dedicating scarce funds toward an undefined and untested concept of recreational management in these circumstances – wherein the land area involved is owned or managed by multiple private parties, and not a single public entity that is normally charged with recreational management – is not supported by the record evidence. Instead, the Commission finds that the more productive and appropriate use of the funds destined for the CSF is to direct these monies to entities administering funds that are charged with delivering specific, discrete outcomes for which there is substantial record evidence of need created by the development proposed in the Concept Plan. As such, the Commission amended the Concept Plan to create three distinct and segregated funds, including the MRF, which is designed to fund outdoor recreation mitigation projects within and surrounding the Plan Area.

Below, the Commission sets forth the basis for its conclusion that the Concept Plan sufficiently avoids, minimizes and mitigates the impacts to existing scenic and recreational resources and uses within and surrounding the Plan Area.

(a) The Concept Plan Reasonably Avoids Adverse Impact To Scenic And Recreational Resources and Uses Within And Surrounding the Plan Area

The Commission finds that the Concept Plan ensures that adverse impact to existing scenic and recreational resources will be completely avoided in the vast majority of the lands within and surrounding the Plan Area. By directing development away from remote areas and many other sensitive locations, and by protecting those areas pursuant to permanent conservation easements whose terms and conditions explicitly protect and/or enhance scenic and recreational values, the Commission finds that the Concept Plan avoids adverse impact to those scenic and recreational resources within and surrounding the Plan Area that are most

²⁷³ E.g., Plum Creek: Daigle, Aug. 31, 2007 filing; AMC: Clish, Aug. 31, 2007 filing; LURC: Anderson, Aug. 31, 2007, Review of Report by Dr. John Daigle.

vulnerable to impact from development and maintains the landscape-scale visual integrity of the Plan Area. Specifically, the Concept Plan accomplishes this by:

- Prohibiting development along the shores of all remote ponds within the Plan Area, the northeast shore of Moosehead Lake in Big W Township, the Spencer Bay shore of Moosehead Lake, pristine segments of the Moose River and the East and West Outlets of the Kennebec River, and along the shores of the ponds in the Roaches Pond Tract;
- Prohibiting development in all remote backland areas of the Plan Area, including the lands north of Cowan’s Cove, Spencer Bay and Kokadjo; the lands in the Roaches Pond Tract, and the lands north of the Moose River, Long Pond and the northern peninsula of Brassua Lake;
- Prohibiting additional development along the shores of lakes valued for their accessible, yet primitive recreational opportunities such as Prong Pond;
- Prohibiting development from portions of lakes proposed for development with high-value scenic and recreational resources, such as the Little Brassua Lake “room” of Brassua Lake and the north shore of Long Pond;
- Preserving the scenic character of approximately 363,000 acres of the Plan Area pursuant to the MRCE whose purpose, terms and conditions will protect in perpetuity the scenic values within this vast landscape by, *inter alia*, (i) prohibiting all residential development within the easement area, (ii) prohibiting most types of commercial and industrial development within the easement area, including major roads and transmission lines, and (iii) identifying and protecting scenic resources visible from lands covered by the MRCE; and
- Protecting and enhancing the scenic character of approximately 29,500 acres adjoining the Plan Area pursuant to the RCE whose purpose, terms and conditions will protect in perpetuity the scenic values of these acres by, *inter alia*, prohibiting all residential development and almost all commercial development thereon.

By guaranteeing permanent public access to a vast scenic landscape and requiring certain recreational infrastructure, the Commission finds that the Concept Plan also ensures that adverse impact to existing recreational uses within and surrounding the Plan Area will be largely avoided. Specifically, the Concept Plan accomplishes this by:

- Providing guaranteed, permanent public access to and use of nearly 400,000 acres of contiguous land for non-exclusive, low-intensity outdoor recreation pursuant to the terms of the MRCE and the RCE; and

- Providing a suite of recreational infrastructure that includes: (i) accommodating only those recreational facilities within the 400,000 acres of the protected properties that support low-intensity outdoor recreation and permitted motorized recreational uses (e.g., campgrounds, public boat launches, and back country huts); (ii) donating 50 acres of land within the protected property to BPL for public campsites, campgrounds, boat launches and additional trailhead parking areas; (iii) providing vehicular access easements for recreational purposes to approximately 57 miles of land management roads that traverse the Plan Area and serve as major access routes to certain recreational resources within and surrounding the Plan Area, including the Cold Stream Pond area, the Route 201 recreation corridor, Spencer Bay and Cowan Cove, the Roaches Ponds Tract, sites along the KI Road leading to the Katahdin Iron Works, and the Seboomook recreational area;²⁷⁴ (iv) providing over 80 linear miles of snowmobile trail easements for the ITS 85/86, 88, and 110 snowmobile trail rights of way; and (v) establishing legally binding mechanisms (including easements and funding agreements) to ensure that hiking trails and associated infrastructure (including trailhead parking) that best meet the recreational hiking needs of the Plan Area and surrounding lands are properly planned, constructed, and maintained.²⁷⁵

(b) The Concept Plan Reasonably Minimizes Adverse Impact To Scenic And Recreational Resources And Uses Within And Surrounding The Plan Area

The Commission recognizes that the Concept Plan development will result in certain unavoidable adverse impact to the scenic and recreational resources and uses of the area. However, by (i) locating most development within already developed viewsheds, (ii) only allowing resort development within relatively undeveloped viewsheds as long as the development diversifies recreational opportunities in the region, and (iii) establishing effective and enforceable standards to camouflage development and manage water access facilities, the Commission finds that the Concept Plan significantly minimizes adverse impact to scenic resources within the viewsheds of all areas proposed for development, and significantly minimizes adverse impact to recreational resources and uses within and surrounding the Plan Area. Specifically, the Concept Plan accomplishes this by:

²⁷⁴ These vehicular road easements would be granted over time and sequenced based on certain subsequent approvals of dwelling units in the Plan Area, pursuant to LURC subdivision and/or development permit authorizations.

²⁷⁵ The Commission finds that this suite of recreational infrastructure is necessary for this Concept Plan to satisfy the criteria for approval. However, the Commission notes that the grant of permanent ITS snowmobile trail easements is a voluntary offer by Plum Creek. While landowners petitioning the Commission for concept plan rezonings in the future are encouraged to consider this model suite in developing their specific proposals, the Commission agrees with BPL (BPL, Nov. 20, 2007 filing) that landowners may satisfy recreational mitigation requirements attributable to their specific proposals in other ways.

- Concentrating development on already developed lakes such as the south shore of Long Pond, the southeast “room” of Brassua Lake, the southwest shore of Moosehead Lake, the southernmost portion of the Lily Bay Peninsula, and the west shore of Upper Wilson Pond, thereby reducing the likelihood of a real or perceived shift in the landscape character of these viewsheds;
- Allowing limited, concentrated development along the shores of visually isolated, undeveloped lakes with no outstanding or significant scenic resource ratings and no record evidence of significant existing recreational resources or uses, such as Burnham Pond;
- Encouraging the placement of development within that portion of the Big Moose Mountain development area that is out of the viewshed of Indian Pond by providing the opportunity for relaxation of certain short-term visitor accommodation unit sequencing requirements;
- Requiring, within each D-MH-RT zone, the creation of a resort core that provides recreational and resource management capacity and contains new recreational facilities which are likely to keep recreationists on-site, thereby reducing the likelihood of increased use of the remote, undeveloped and other significant recreational resources in the region;
- Establishing land use standards applicable to all development areas that minimize the visual evidence of development. These standards include requirements to (i) comply with the Commission’s existing shoreland vegetation clearing standards, (ii) adhere to new performance standards for vegetation clearing on back-lots that eliminate or minimize the impacts of cleared openings, building façades and silhouetted perimeters, (iii) adhere to enhanced restrictions on construction materials and building design for shorefront and back-lot structures which set limits on exterior colors, reflectivity, mass, building height and exterior lighting, and (iv) consolidate the placement of shoreland structures and water access sites serving both shorefront and back-lot development;
- Increasing the likelihood of compliance with existing and new land use standards and easing LURC’s enforcement burden by (i) establishing requirements that permits must be obtained prior to conducting any vegetation clearing activities associated with development, (ii) imposing procedures for evaluating and conducting vegetation clearing activities which set forth certain permit application submission requirements in order for the Commission to evaluate development proposals for consistency with the back-lot vegetation clearing standards and the procedures that must be followed for any such vegetation clearing activities, and (iii) making all residential lots and dwelling units subject to an independent third-party inspection on an annual basis to determine compliance with the back-lot vegetation clearing standards; and

- Requiring the documentation of existing levels and patterns of boating capacity in Lily Bay and, in consultation with LURC and BPL, assessing the carrying capacity of the bay and its major sections (including consideration of hazards, capacity of thoroughfares, and minimum surface acres needed per boat on the water at one time to maintain the desired character of the bay), and limiting the number of boats accommodated at shoreland structures accordingly.

(c) The Concept Plan Provides The Requisite Mitigation For Unavoidable Adverse Impact To Scenic And Recreational Resources And Uses

The Commission finds that the Concept Plan provides the requisite mitigation for adverse impacts to existing scenic and recreational resources and uses that are otherwise unavoidable, such that no impact from the Concept Plan will be unduly adverse. Specifically, the Concept Plan accomplishes this by:

- Establishing long-term development plan review criteria for resort development within D-MH-RT zones that require an enforceable mitigation plan, financial or otherwise, whereby resort developers are required to address any recreational impacts that arise beyond the boundaries of the development area;
- Establishing the MRF to fund outdoor recreation mitigation projects within and surrounding the Plan Area; and
- Ensuring that, where increased recreational use in certain areas is likely to displace existing recreational uses, particularly for those recreationists seeking non-motorized recreational opportunities in a semi-primitive or roaded natural setting (such as the northern portion of Indian Pond), the capacity exists to accommodate these uses and provide comparable recreational experiences – vis-à-vis both the setting and the recreational infrastructure – in other locations within or nearby the Plan Area (such as Spencer Bay in Moosehead Lake and the Roaches Ponds Tract).

(d) The Concept Plan Addresses All Relevant Specific Scenic And Recreational Issues Raised On The Record

As discussed above, the Commission evaluated the Concept Plan's impacts on existing scenic and recreational resources and uses holistically and finds that these impacts are not unduly adverse. In reaching this conclusion, the Commission also considered all of the issues presented on the record and assessed the various site-focused and other specific scenic and recreational issues presented by members of the public, parties and governmental review agencies.²⁷⁶ These include, by way

²⁷⁶ See, e.g., LURC: Staff and Consultants, Sep. 16, 2008, Notebook 2, pp. 5.24-5.25; LURC: Staff and Consultants, May 26, 2009, Memorandum to Commission: Summary of staff/consultant recommended revisions to March 2, 2009 draft Concept Plan.

of example: the scenic and recreational impact of the proposed Lily Bay development area on Lily Bay State Park; the scenic and recreational impact of the proposed Big Moose Mountain development area on Indian Pond; the scenic impact of increased lighting from development, including impact on the night sky; the scenic and recreational impact of boats, docks and other on-shore structures; the scenic impact of view corridors and cleared openings associated with development; the recreational impact of the proposal on motorized recreation; and the impact of increased numbers of recreationists on the angler experience at the East Outlet of the Kennebec River.

In many cases, the Commission amended Plum Creek's proposal in response to issues raised. For example, the Commission endorsed amendments to the Concept Plan that included limitations on the numbers and locations of shoreland structures and water access sites within development areas, including at Indian Pond.²⁷⁷ In other cases, the Commission did not accept the basis of public or party views and, accordingly, rejected recommendations made by the public or parties. For example, the Commission was not persuaded that the Lily Bay development area would cause an undue adverse scenic impact on Lily Bay State Park, as some parties contended, because record evidence demonstrated that views of the Lily Bay development area from the Park would be screened by intervening islands.²⁷⁸

Below, the Commission discusses some of these specific issues in more detail. Further information on these and other specific scenic and recreational impact issues are contained in the administrative record.

(i) *The Commission Has Relied On Reasonable Analytical Tools And Conceptual Frameworks In Evaluating The Concept Plan's Scenic And Recreational Impacts*

Several parties questioned the accuracy and regulatory relevance of relying on visual simulations and the ROS to characterize scenic values of landscape and to evaluate the Concept Plan's impacts on recreational resources, particularly primitive recreation, within and surrounding the Plan Area.²⁷⁹ While the Commission recognizes that any analysis carries with it certain assumptions and limitations, for the reasons set forth below, the Commission finds that these particular analytical tools and conceptual frameworks are relevant and useful in evaluating scenic and recreational impacts of development proposals.

²⁷⁷ LURC: Concept Plan, Sep. 23, 2009, Sec. II, Sub-Ch. IV, 10.32.

²⁷⁸ LURC: Palmer, Aug. 31, 2007, A Review of the Potential Visual Effects from Implementing the Proposed Concept Plan for Plum Creek's Lands in the Moosehead Lake Region; Plum Creek: Allen, Prefiled Rebuttal Testimony, p. 16.

²⁷⁹ E.g., AMC: Clish, Aug. 31, 2007 filing, pp. 4-13; BPL, Nov. 20, 2007 filing, p. 8; Tr. Jan. 15, 2008, Vol. II, pp. 146-148, 198-200, 237-239, 254-259, 266-271.

– *Assessing Scenic Impacts:*

The Commission agrees with its consultant James Palmer that the evaluation of scenic impacts need not be a subjective exercise.²⁸⁰ Public agreement about what constitutes a scenic landscape is generally high, judgments of scenic quality are quite stable and tend not to change over time, and established methods exist for assessing the scenic quality of a landscape and determining the characteristics – such as topography and presence of vegetation – that make a particular landscape more or less vulnerable to the scenic impacts from changes in land uses. In evaluating scenic impacts, the Commission relied in particular on the two principles underlying professional evaluations of scenic impacts: (i) the introduction of a discordant element into a landscape,²⁸¹ and (ii) the conversion of the landscape from one type to another.²⁸²

The Commission finds that a useful tool to help understand the changes to the landscape from the introduction of one or more discordant elements is to create visual simulations (“visualizations”). Although visualizations are typically conducted for projects with well-defined site development plans, specific development details pertaining to the size, design and placement of structures, roads and other infrastructure are not required of concept plans.²⁸³ Consequently, the visualizations submitted by the scenic experts in this proceeding are based on a set of assumed future conditions. The Commission finds that, if these assumptions are consistent with the provisions of the Concept Plan, the simulations can be used to understand what makes a landscape more or less vulnerable to visual change and, accordingly, the approaches to avoiding or minimizing such change. In evaluating the scenic impacts of the Concept Plan, the Commission carefully reviewed and took into consideration the assumptions embedded in the visualizations submitted by witnesses.²⁸⁴

²⁸⁰ LURC: Palmer, Aug. 31, 2007, A Review of the Potential Visual Effects from Implementing the Proposed Concept Plan for Plum Creek’s Lands in the Moosehead Lake Region, pp. 10-17; Plum Creek: Allen, Aug. 31, 2007 filing, pp. 2-3.

²⁸¹ I.e., As a discordant element is introduced into a particular landscape, it has a greater impact than succeeding introductions of similar discordant elements. For example, the first visible cleared opening in an otherwise forested landscape has greater impact than succeeding visible cleared openings.

²⁸² I.e., at some point, the introduction of discordant elements may change the landscape type itself rather than simply degrade its scenic quality. For example, as more residences are built in a forested area, the landscape shifts from a forested to a suburban landscape.

²⁸³ “A concept plan does not require the detailed technical information associated with a site-specific development plan and does not take the place of such plans.” (CLUP, 1997, p. C5.)

²⁸⁴ For example, Commission staff and consultants requested that James Palmer peer review the analyses submitted by Plum Creek witness Matt Allen. Palmer’s reviews include detailed discussions of assumptions used by Plum Creek. (See, e.g., LURC: Palmer, Dec. 19, 2008, Review of Field Tests and Desktop Analysis Conducted by Saratoga Associates.)

- *Assessing Recreational Impacts:*

Consistent with the Commission's recreational resources goals and policies which address both recreational resources and recreational uses, the Commission's evaluation of the Concept Plan's recreational impact involved consideration of both (i) the existing recreational landscape, including its natural resources and its recreational infrastructure, and (ii) existing recreational opportunities.²⁸⁵

In order to both quantify the existing recreational resources and uses within and surrounding the Plan Area and better understand the effects of the Concept Plan on the recreation landscape and recreation opportunities, several experts²⁸⁶ utilized a conceptual tool – the ROS – in this proceeding. The ROS was originally developed by the USDA Forest Service as a management tool that categorizes recreational opportunities based on the activities pursued and the physical, social, and managerial aspects of the setting. Newer versions of the ROS use a six-category model – Urban, Suburban, Rural Developed, Rural Natural, Semi-Primitive, and Primitive – to classify recreational opportunities. The analyses using the ROS primarily focused on characterizing the physical aspects of the landscape and how they might change in the future (either as a result of implementing the Concept Plan or due to future projected land uses if the Concept Plan were not implemented).

Based on its review of these analyses and careful consideration of their assumptions and limitations, the Commission finds the ROS a useful tool in understanding the recreational changes to a landscape. Accordingly, the Commission finds the analyses utilizing the ROS of value, and has applied this construct in evaluating the Concept Plan's impacts to recreational resources and uses within and surrounding the Plan Area.

(ii) *The Concept Plan Will Not Cause Undue Adverse Impact To Recreational Opportunities At Lily Bay State Park*

Several parties raised concerns regarding the impact of the Lily Bay development area on the capacity and recreational experience at nearby Lily Bay State Park.²⁸⁷

²⁸⁵ LURC: Anderson, Aug 31, 2007, Review of Report by Dr. John Daigle.

²⁸⁶ Plum Creek: Daigle, Aug. 31, 2007 filing; AMC: Clish, Aug. 31, 2007 filing, pp. 6-8; LURC: Anderson, Aug 31, 2007, Review of Report by Dr. John Daigle.

²⁸⁷ E.g., AMC: Clish, Aug. 31, 2007 filing, pp. 19-22; MWGO, Aug. 31, 2007 filing, pp. 4, 10-11.

Lily Bay State Park, located two miles south of Lily Bay Township in the Town of Beaver Cove, is a 924-acre, well-visited facility with 91 campsites, two boat launch areas with slips, and a swimming beach. As a managed park with maintained motorized road access, campsites that are proximate to each other with easy visual and sound contact between most campsites, and constructed and managed facilities in a natural-appearing setting, the park falls in the “Rural” portion of the ROS (near primary roads, served by designed roads, interaction between users often is moderate to high and sights and sounds of people are readily evident, resources are managed to enhance specific recreation activities and maintain vegetative cover; managed facilities).²⁸⁸ The heart of the park, including its camping, boating, and swimming facilities, is located one mile or farther from Lily Bay Road, creating a natural visual and noise buffer from increased traffic on the road. It is visually isolated from the proposed Lily Bay development area, with no views of the development area from any of the campsites in the primary park.²⁸⁹ The Mud Brook group camping area north of the park has a view line to Carleton Point. Boaters launching from the park and headed north into Lily Bay will have views of portions of the development area. Part of the shoreline of this area is presently populated with dwellings without vegetative buffers that meet current standards and therefore are highly visible from the water today.

Lily Bay State Park operates at or near capacity during peak seasonal periods. According to the record, the park is likely to exceed its capacity due to background growth and/or increased visitorship attributable to the Concept Plan development. The effect of the Lily Bay development area will likely be indirect, since, according to the record, the development area may appeal to an older demographic market than the one that tends to use the park.²⁹⁰ Whether the result of background growth or the Concept Plan, some visitors to Lily Bay State Park may need to seek out alternative recreational infrastructure and opportunities in the future. Comparable camping and hand-carry boating alternatives exist on the east side of Moosehead Lake, including campsites at Spencer Bay and Cowan’s Cove and boating opportunities at Prong Pond. These alternative recreational sites appear to have the capacity to accept increased use.²⁹¹

The Commission finds that the 404 units contemplated for the Lily Bay development area will inevitably change the character of the development area itself by converting the working forest contained within the

²⁸⁸ LURC: Palmer, Aug. 31, 2007, A Review of the Potential Visual Effects from Implementing the Proposed Concept Plan for Plum Creek’s Lands in the Moosehead Lake Region, p. 46; Plum Creek: Daigle, Aug. 31, 2007 filing, p. 20.

²⁸⁹ LURC: Palmer, Aug. 31, 2007, A Review of the Potential Visual Effects from Implementing the Proposed Concept Plan for Plum Creek’s Lands in the Moosehead Lake Region, p. 46; Plum Creek: Daigle, Aug. 31, 2007 filing, p. 20.

²⁹⁰ Plum Creek: Daigle, Aug. 31, 2007; Philips, Aug. 31, 2007, Exhibit 2, page 15

²⁹¹ Plum Creek: Daigle, Aug. 31, 2007 filing, Exhibit 3, pp. 10-11.

development area to a developed or otherwise structured environment, allowing types of recreational facilities in the development area that likely will be more intensive and potentially more exclusive than those elsewhere on the Lily Bay peninsula and in surrounding areas. Thus, the ROS within the footprint of the Lily Bay development area will likely migrate from the present “Roaded Natural” part of the spectrum to the “Rural” part of the spectrum (substantially modified natural environment, sights and sounds of people readily evident, interactions between users moderate to high).²⁹² Likewise, the Commission finds that increased visitorship generated by development at Lily Bay could potentially impact some of the existing recreational uses in the immediate vicinity of the development area such as, for example, camping at the park and non-motorized boating in the bay.

However, the Commission finds that comparable recreational opportunities within the surrounding area will be simultaneously enhanced and protected. Within the Lily Bay development area’s immediate sphere of influence, enhanced protections will be provided through (i) vehicular access easements on major private roads to the Spencer Bay and the Roaches Ponds Tract areas, (ii) permanent protection of and guaranteed public access to thousands of acres of conserved land adjacent to the narrow shoreline easements currently in State of Maine ownership through the Lily Bay, Spencer Bay, and Day’s Academy Grant areas, thereby increasing protection for the remote camping and boating opportunities there, and (iii) permanent protection of the 29,500-acre Roaches Ponds Tract that will protect and enhance remote, undeveloped, primitive and non-motorized backcountry recreational opportunities.

Further, the Commission finds that the Concept Plan includes a number of provisions that will minimize and mitigate impacts to Lily Bay State Park itself. For example, the Concept Plan prescribes enhanced scenic character standards and review processes for back lot development, which are designed to reduce the visual impacts of residential and resort development. The Concept Plan’s requirement for a resort core with recreational facilities in the Lily Bay development area will help to meet the needs of resort visitors on-site and reduce the extent to which those visitors will burden recreational resources elsewhere.

Based on these and other provisions contained in the Concept Plan which avoid, minimize and mitigate recreational impacts, the Commission concludes that the Concept Plan will not cause an undue adverse impact to Lily Bay State Park or the recreational uses in the area that it engenders.

²⁹² LURC: Palmer, Aug. 31, 2007, A Review of the Potential Visual Effects from Implementing the Proposed Concept Plan for Plum Creek’s Lands in the Moosehead Lake Region, pp. 46-49.

(iii) *The Concept Plan Will Not Cause Undue Adverse Impact To Primitive Recreational Resources And Uses At Indian Pond*

Several parties raised concerns regarding the Concept Plan's impact on recreational resources and uses associated with Indian Pond.²⁹³ Parties were especially concerned with whether the proposed development within the shoreland area of Indian Pond was permitted by FERC, the terms of access to the shore of Indian Pond in light of FERC requirements, the impact of multiple *ad hoc* access points to and across the shore, and the impact of a shift in the recreational setting of Indian Pond due to visual evidence of intensive development within the viewshed of the pond and increases in recreational use of the pond attributable to the Big Moose Mountain development area at large. Certain parties recommended that the development proposed for the southeast shore of Indian Pond be removed to comply with FERC limitations and to reduce recreational use pressures on Indian Pond.²⁹⁴

Based on the facts and analysis set forth below, the Commission finds that that the Concept Plan and the development it contemplates complies with the terms of the Indian Pond FERC settlement agreement. Further, the Commission finds that the Big Moose Mountain development area as a whole, as well as the Indian Pond development sub-area specifically, will cause no undue adverse impact to recreational resources and uses, particularly for primitive pursuits.

- *Indian Pond Provides Accessible, Yet Primitive Recreational Opportunities*

Indian Pond is a Management Class 3 lake with outstanding wildlife and fisheries resource ratings, and significant cultural resource ratings. It is connected to Moosehead Lake by the East and West Outlets of the Kennebec River. Existing recreational uses are dominated by paddling, boating, fishing, wildlife viewing, and camping, some of which is associated with whitewater rafting activities on the southern end of the pond. The north end of Indian Pond is also valued as a traditional canoe route, and a haven for anglers and whitewater paddlers.

While Indian Pond has a quiet and remote feeling, it is easily accessible by road from Greenville, providing visitors, local guides and outfitters opportunities for day trips. The shores of Indian Pond contain numerous camping facilities, which serve as important infrastructure to accommodate overnight trips. One trailered public boat launch facility exists on the northwest shore of

²⁹³ E.g., AMC: Clish, Aug. 31, 2007 filing, pp. 14-19; MWGO, Aug. 31, 2007 filing, pp. 3-4, 9-10.

²⁹⁴ AMC: Publicover, Aug. 31, 2007 filing, pp. 15-16; MWGO, Aug. 31, 2007 filing, p. 4.

the pond. The pond has very high public use and there is presently concern about overuse of Indian Pond, indicating that there would be little room for increased or more intensive use before the recreational experience on the pond is altered.²⁹⁵

The pond shores are subject to a FERC hydropower license and settlement agreement. Land up to the 960-foot contour line is within the FERC project boundary and outside of Plum Creek's ownership; thus, the land below this contour is specifically excluded from the Plan Area and the associated P-RP Subdistrict.

- *The Indian Pond Development Sub-Area Does Not Impinge On The FERC Settlement Agreement*

Plum Creek originally proposed to develop three segments of the southwest shore of Indian Pond. Over the course of this proceeding, Plum Creek amended the Concept Plan to exclude two of the three sites from development. The Commission also substantially amended the zoning for the remaining development area from an ill-defined "low-intensity" resort development area to a D-MH-PR zone. This zone restricts permitted uses to primitive resort accommodations, uses and structures modeled on LURC's current definition of commercial sporting camps. Specifically, the zone limits development to back-country huts, commercial sporting camps and remote rental cabins, and associated primitive and motorized recreational uses. Residential development, including subdivisions and dwelling units, is prohibited. Further, the aggregate size of all principal buildings within the zone must not exceed 10,000 square feet.

As a result of these restrictions, this zone confers no materially greater development rights on Plum Creek than currently exist under the Commission's rules, as commercial sporting camps are presently allowed with a permit in the M-GN Subdistrict and by special exception in the P-GP Subdistrict, the present zoning of this development sub-area. Because the permitted accommodations cannot have separate ownership units (i.e., cannot be subdivided), the allowed low-impact resort use lends itself to centralized management by a single owner (including, potentially, a future resort owner of the Big Moose Mountain development area) who can more easily control *ad hoc* boating access and will be more easily subject to enforcement actions if there are violations of rules or adjacent property owners' rights (such as the FERC project boundaries) by visitors.

²⁹⁵ MRFC: Aug. 31, 2007 filing; AMC: Clish, Aug. 31, 2007 filing, pp. 13-15.

The Commission agrees with parties that the FERC settlement precludes granting the developer of this area any private rights of access to Indian Pond. However, the FERC settlement allows public pedestrian rights of access to the pond. Simply stated, the rights of pedestrian access that the FERC settlement provides apply equally to the private owners of the upland parcels as well as to the public at large. The minimum mandatory declaration elements contained in the Concept Plan, which set forth certain rights held by adjoining landowners (including the right of access to Indian Pond), put on notice future landowners that users of the development sub-area will be limited in their ability to access the pond to those pre-existing rights of pedestrian access. These public rights include the right to hand-carry canoes, kayaks and the like over the FERC project area to the water's edge. Parties' concerns about multiple *ad hoc* points of access are addressed through Concept Plan requirements limiting access to a single point from the primitive resort development to the FERC project boundary contour.

- *While The Big Moose Mountain Development Area Will Likely Change the Recreational Setting Of Indian Pond, It Will Not Cause An Undue Adverse Impact To Primitive Recreational Uses*

From the early stages of this proceeding, parties encouraged the Commission to weigh the highest and best use of the Big Moose Mountain area, taking into consideration its proximity to the Town of Greenville, Route 6/15, and the abutting Squaw Mountain ski resort facility.²⁹⁶ In light of this testimony, the Commission finds that the highest and best use of this area is for a carefully planned nature-based resort development that is compatible with the existing natural, cultural and historical resources located within the development area and the surrounding largely undeveloped areas, that will diversify recreational opportunities and provide recreational infrastructure and management capacity, and that creates the potential for permanent jobs. For this reason, the Commission has taken great care to ensure that the resort contemplated for the Big Moose Mountain development area not be built in a manner that effectively makes it a large-scale residential subdivision.

²⁹⁶ E.g., COALITION: Packer, Aug. 31, 2007 filing; MSCC: Stinson, Aug. 31, 2007 filing; MA-NRCM: Christ, Aug. 31, 2007 filing; MRFC: Neily, Aug. 31, 2007 filing; PCEDC: Scarano, Aug. 31, 2007 filing; Plum Creek: Fitchner, Aug. 31, 2007 filing; Plum Creek: David Vail, Aug. 31, 2007 filing; Tr. Dec. 6, 2007, pp. 20-205; Tr. Dec. 7, 2007, pp. 251-254; Tr. Dec. 10, 2007, p. 159.

Nonetheless, the Commission finds that the land use changes at the Big Moose Mountain development area, even in light of the Concept Plan requirements designed to avoid and minimize impacts to scenic and recreational resources, are likely to lead to a shift in the ROS from its present “Roaded Natural” setting to a more “Rural” setting (substantially modified natural environment, sights and sounds of people readily evident, interactions between users moderate to high).²⁹⁷ The Commission agrees with its recreation expert Mark Anderson that Indian Pond will likely be subject to the “invasion-succession” model, whereby some existing recreationists will find the shift in setting unacceptable and will seek alternate, comparable recreational experiences elsewhere, while new recreationists will find the new setting and the recreational experiences offered at Indian Pond attractive.²⁹⁸

However, the Commission finds that this shift in setting, and the potential adverse impact to some recreationists and existing recreational uses, is not unduly adverse because the Concept Plan contains requirements to (i) develop within the Big Moose Mountain development area resort cores containing short-term visitor accommodations, hospitality amenities and recreational facilities; (ii) sequence residential development in relation to minimum required short-term visitor accommodations; (iii) construct new on-site recreational facilities; and (iv) mitigate for impacts that arise beyond the boundaries of the development area. All of these requirements will serve to minimize off-site impacts to recreational resources.

As contemplated under the Concept Plan, the Big Moose Mountain development area must contain a resort core in the first phase of development that is comprised of hospitality amenities, short-term visitor accommodations and recreation facilities. These new recreation facilities must be of a type, scale, location and management to encourage their regular use by owners of and visitors to the Big Moose Mountain development area, thereby reducing use pressures on surrounding recreational resources such as Indian Pond.

²⁹⁷ LURC: Palmer, Aug. 31, 2007, A Review of the Potential Visual Effects from Implementing the Proposed Concept Plan for Plum Creek’s Lands in the Moosehead Lake Region, pp. 46-49.

²⁹⁸ LURC: Anderson, Aug. 31, 2007, Review of Report by Dr. John Daigle.

Other comparable primitive recreational opportunities in the Plan Area will be simultaneously enhanced and protected. Within the Big Moose Mountain development area's immediate sphere of influence, enhanced protections will be provided through vehicular access easements on major private roads to the Seboomook, Cold Stream Pond, Chase Stream Township, and Route 201 recreational areas, and permanent protection of and guaranteed public access to thousands of acres of conserved land adjacent to the Big Moose Mountain development area, including along the shores and within the viewsheds of a number of remote and undeveloped ponds and the East and West Outlets of the Kennebec River, thereby increasing protection beyond what presently exists for the remote camping, fishing, paddling and boating opportunities there.

Provisions in the Concept Plan also assure that scenic and recreational impacts of the Big Moose Mountain development area will be minimized and mitigated. For example, the Concept Plan prescribes enhanced scenic character standards and review processes for back lot development, which are designed to reduce the visual impacts of residential and resort development. The Concept Plan also requires resort developers to demonstrate, as part of long-term development plan reviews, that development avoid where possible and otherwise reasonably minimizes impacts to remote, undeveloped and other significant recreational resources located within the Moosehead Lake region. Further, where impacts are unavoidable, the developer must provide an enforceable mitigation plan addressing the impacts that will arise beyond the boundaries of the development area.

(e) Conclusions

Based on its review of the record evidence and the Commission's analysis of the means by which the Concept Plan avoids, minimizes and mitigates adverse scenic and recreational impacts, the Commission concludes that the Concept Plan will cause no undue adverse impact to existing scenic or recreational resources or uses. In fact, the Commission finds that the Concept Plan – through its careful placement of development, its rigorous land use standards and procedures, its significant landscape-scale conservation elements, and its suite of recreational infrastructure – furthers the Commission's goals and policies pertaining to scenic and recreational resources and uses, and does so better than the Commission's existing zoning framework.²⁹⁹

²⁹⁹ See, e.g., paragraph 9.C.

(2) **The Proposed Land Use District Has No Undue Adverse Impact On Existing Wildlife or Plant Uses Or Resources**

In evaluating the Commission's statutory rezoning criterion of "no undue adverse impact on existing uses and resources" as this criterion pertains to wildlife and plant resources, the Commission draws upon the following regulatory materials for its evaluation:

- The principal value of "[d]iverse, abundant and unique high-value natural resources and features, including ... fish and wildlife resources, ecological values ..."³⁰⁰
- The Commission's specific goals and policies pertaining to wildlife and fisheries resources, including the goal to "[c]onserve and protect the aesthetic, ecological, recreation, scientific, cultural, and economic values of wildlife and fisheries resources," and policies to: (i) regulate land uses to protect habitats, including deer wintering areas, fish spawning/nursery/feeding habitats, ecosystems, food sources and other life requisites for wildlife species; (ii) protect wildlife habitat in a fashion which is balanced and reasonably considers the management needs and economic constraints of landowners; and (iii) encourage management of fisheries and wildlife resources to maintain their habitats, diversity and populations.³⁰¹
- The Commission's specific goals and policies pertaining to special natural areas, including the goal to "[p]rotect and enhance identified features and areas of natural significance," and the policy to "[i]dentify and protect natural areas that possess unique physical features, or which serve as habitat for rare, threatened or endangered species or representative plant communities."³⁰²
- The Commission's specific goals and policies pertaining to wetland resources, including the goal to "[c]onserve and protect the aesthetic, ecological, recreational, scientific, cultural and economic values of wetland resources," and the policy to "[e]nsure that development projects in wetlands (in this order) avoid, minimize, restore, reduce or eliminate over time, and/or compensate for functional wetland losses."³⁰³
- The lake-specific management classifications and fisheries, wildlife, botanic and other resource values identified as significant or outstanding in the Commission's Wildlands Lakes Assessment for lakes within the Plan Area.³⁰⁴

Throughout this proceeding, members of the public have raised concerns and presented testimony regarding the impacts of the Concept Plan proposal to specific wildlife and plant species existing within and surrounding the Plan Area (including Canada lynx, bald

³⁰⁰ CLUP, 1997, p. 114.

³⁰¹ CLUP, 1997, p. 139.

³⁰² CLUP, 1997, p. 138.

³⁰³ CLUP, 1997, p. 139.

³⁰⁴ Appendix C of Ch. 10, the Commission's rules.

eagle, moose, deer, loons, native brook trout, and lady slippers) and the habitat that supports these species (e.g., aquatic and terrestrial habitat impacts, including habitat alteration and fragmentation, wetland habitat, riparian habitat, and wildlife travel corridors; impacts to fish spawning sites; and impacts to specific resources, including Burgess Brook, Misery Stream and Williams Stream area in Big W Township).³⁰⁵ Parties and governmental review agencies also provided the Commission with extensive testimony and comments, including from expert witnesses, regarding the proposal's effects on wildlife and plant resources. Specifically, witnesses for Plum Creek, FEN-RESTORE, FSM, MA-NRCM, NFN, and TNC submitted prefiled testimony, and MDIFW-MNAP and US FWS, and the U.S. Army Corps of Engineers ("US ACE") submitted governmental review agency comments, focusing on wildlife and plant resources impacts.³⁰⁶ Adjudicatory hearings were held on matters pertaining to wildlife and plant resources on January 16, 17 and 18, 2008, when these witnesses, and representatives of MDIFW and MNAP,³⁰⁷ were subject to cross examination by parties and questioning by the Commission and its staff and consultants. Issues presented in prefiled testimony and comments, and during the adjudicatory hearings, included, *inter alia*:

- Whether the development of the Lily Bay peninsula, and the secondary effects of proposed development on the peninsula and elsewhere including increased vehicular traffic attributable to Concept Plan development, will cause direct or indirect impacts to Canada lynx, including habitat loss, habitat fragmentation, lynx displacement, and lynx road mortality;³⁰⁸
- Whether the Concept Plan adequately protects documented habitat for forest song birds, including rusty blackbird, least bittern and bicknell's thrush;³⁰⁹
- Whether the Concept Plan will contribute to wood turtle road mortality and/or pet trade collection, particularly in the Moose River ecosystem where wood turtle have been documented;³¹⁰

³⁰⁵ E.g., LURC: Staff and Consultants, Oct. 31, 2005, Summary of Issues Related to the Plum Creek Concept Plan Proposal for the Moosehead Lake Region Presented to the Land Use Regulation Commission at the August 2005 Scoping Sessions and in Follow-up Written Submittals, pp. 7-10.

³⁰⁶ E.g., FEN-RESTORE: Boretos, DeJoy, and Vistein, Aug. 31, 2007 filing; MA-NRCM: Charry, Evers, Hynes, Kulik, and Struhsacker, Aug. 31, 2007 filing; MDIFW-MNAP, Aug. 31, 2007 filing; MDIFW-MNAP, Sep. 14, 2007 filing; MDIFW-MNAP, Nov. 20, 2007 filing; NFN: Cohen, Kemp, Perkins, and Posner, Aug. 31, 2007 filing; Plum Creek: Arsenault and Pelletier, Leeson, Podolsky, Stabins, and Kirchies, Aug. 31, 2007 filing; TNC: Rumpf, Tetreault and Vickery, Aug. 31, 2007 filing; US ACE, Aug. 31, 2007 filing; US FWS, Sep. 17, 2007 filing; US FWS, Nov. 20, 2007 filing.

³⁰⁷ In assigning relative weight to the evidence, the Commission has taken into account that the comments of US FWS and US ACE were not sworn testimony, and their authors were not subject to cross examination.

³⁰⁸ E.g., FSM: Hutchinson, Aug. 31, 2007 filing, pp. 12-13; MA-NRCM: Charry, Aug. 31, 2007 filing, p. 35; MA-NRCM: Struhsacker, Aug. 31, 2007 filing, pp. 9-13, 17-19 and Exhibits 8-9; MDIFW-MNAP, Aug. 31, 2007 filing, pp. 14-15; Plum Creek: Arsenault and Pelletier, Aug. 31, 2007 filing, pp. 11-13; TNC: Rumpf, Tetreault, and Vickery, Aug. 31, 2007 filing, p. 8 and Exhibit 6; US FWS, Aug. 31, 2007 filing, p.4.

³⁰⁹ E.g., MA-NRCM: Charry and Hynes, Sep. 14, 2007 filing; MDIFW-MNAP, Aug. 31, 2007 filing, p. 15; Plum Creek: Arsenault and Pelletier, Aug. 31, 2007 filing, pp. 10-12; Plum Creek: DeGraaf, Aug. 31, 2007 filing; Plum Creek: Podolsky, Aug. 31, 2007 filing; US FWS, Sep. 17, 2007 filing, pp. 15-18, 31-32.

- Whether development proposed on the north shore of Long Pond will adversely affect the Churchill Stream wetland complex and its associated high-value resources, including the least bittern, rusty blackbird and streamshore ecosystem natural community;³¹¹
- Whether the Concept Plan adequately protects wildlife travel corridors in the Plan Area, including the corridors between Long Pond and Brassua Lake, along the northeast shore of Indian Pond, and on Blue Ridge;³¹²
- Whether development within the Route 6/15 Corridor development area is illegal because it occurs in part within the legal boundaries of the Somerset Game Sanctuary;³¹³
- Whether the Concept Plan will adversely affect Common loons;³¹⁴
- Whether the Concept Plan adequately protects significant habitat, including vernal pools, riparian habitat, fish and aquatic habitat, waterfowl and wading bird habitat, and deer wintering habitat;³¹⁵
- Whether the locations, sizes, and terms of proposed conservation easements are adequate to mitigate any adverse impact of proposed development, including impact from cumulative habitat loss;³¹⁶ and
- Whether sufficient information and survey work has been conducted to ensure adequate information is available to assess wildlife and plant resources impacts.³¹⁷

Over the course of this proceeding, testimony and comments filed by members of the public, parties and governmental review agencies were the basis for amendments to the Concept Plan, first by Plum Creek and ultimately by the Commission, which were aimed at avoiding, minimizing and mitigating adverse impact to wildlife and plant resources.

³¹⁰ E.g., MA-NRCM: Charry, Aug. 31, 2007 filing, pp. 7-9; Plum Creek: Arsenault and Pelletier, Aug. 31, 2007 filing, pp. 13-14.

³¹¹ E.g., MA-NRCM: Charry, Aug. 31, 2007 filing, p. 37; MA-NRCM: Hynes, Sep. 14, 2007 filing, pp. 8-11; Plum Creek: Arsenault and Pelletier, Aug. 31, 2007 filing, pp. 8-9.

³¹² E.g., MA-NRCM: Charry, Aug. 31, 2007 filing, p. 40; MDIFW-MNAP, Aug. 31, 2007 filing, pp. 12-14.

³¹³ E.g., FEN-RESTORE: Vistein and Boretos, Aug. 31, 2007 filing; Plum Creek: Aug. 31, 2007 filing; Public Comment: George Bakajza, Jul. 3, 2007; Public Comment: Albert Manville, Aug. 16, 2007; Public Comment: Albert Manville and Sandra Scholar, Sep. 30, 2007.

³¹⁴ E.g., MA-NRCM: Evers, Aug. 31, 2007 filing; MDIFW-MNAP, Aug. 31, 2007 filing, pp. 14-15; Plum Creek: Blair, Aug. 31, 2007 filing; US FWS, Sep. 17, 2007 filing, pp. 16-17, 28-29.

³¹⁵ E.g., MA-NRCM: Charry, Aug. 31, 2007 filing, pp. 11-19; MDIFW-MNAP, Aug. 31, 2007 filing, pp. 18-19; NFN: Kemp, Aug. 31, 2007 filing; US FWS, Sep. 17, 2007 filing, pp. 18-21.

³¹⁶ E.g., MA-NRCM: Charry, Aug. 31, 2007 filing, pp. 20-34; MDIFW-MNAP, Nov. 20, 2007 filing, pp. 2-11; NFN: Perkins, Aug. 31, 2007 filing; Plum Creek: Leeson, Aug. 31, 2007 filing; US FWS, Sep. 17, 2007 filing, pp. 34-43; US FWS, Nov. 20, 2007 filing, pp. 1-4 and Appendix 1.

³¹⁷ E.g., FEN-RESTORE: Boretos, Aug. 31, 2007 filing; MDIFW-MNAP, Aug. 31, 2007 filing, pp. 16-17; MDIFW-MNAP, Nov. 20, 2007 filing, p. 12; NFN: Kemp, Aug. 31, 2007 filing.

Below, the Commission sets forth the basis for its conclusion that the Concept Plan will cause no undue adverse impacts to existing wildlife and plant resources, and the principal value of diverse, abundant and unique high-value natural resources and features, including fish and wildlife resources and ecological values.

(a) The Concept Plan Reasonably Avoids And Minimizes Adverse Impact To Wildlife And Plant Resources Within And Surrounding The Plan Area

The Commission finds that the provisions of the Concept Plan ensure that adverse impact to wildlife and plant resources is completely avoided in the vast majority of the Plan Area and significantly minimized elsewhere. By (i) directing development away from areas containing high-value natural resources, (ii) protecting those areas pursuant to permanent conservation easements whose terms and conditions explicitly protect wildlife and plant resources values, and (iii) establishing land use standards and review processes that avoid and minimize adverse wildlife and plant impacts within development areas, the Commission finds that the Concept Plan avoids and minimizes adverse impact to wildlife and plant resources within the Plan Area. Specifically, the Concept Plan accomplishes this by:

- Excluding from development lands with known high-value natural resources, including inland waterfowl and wading bird habitats and 250-foot buffers surrounding such habitats, mapped deer wintering habitat, high-value wetland complexes, and identified Canada lynx habitat (e.g., the north shore of Long Pond; portions of the south shore of Long Pond, Moose Bay, Big Moose Mountain, Brassua Lake south peninsula, and Lily Bay);
- Pursuant to the MRCE, permanently prohibiting residential development on approximately 363,000 acres of the Plan Area and prohibiting land uses that cause undue adverse effect to the protected property's Conservation Values, including wildlife and plant resource values and ecological values;
- Establishing "no disturbance areas" comprised of known high-value natural resources within certain development areas where inclusion of these resources in the MRCE is not appropriate, and imposing land use restrictions that, *inter alia*, limit timber harvesting and road construction and prohibit structural development, filling and grading, and vegetation clearing;
- Continuing to apply the natural resources protections afforded by the Commission's Protection Subdistricts, including as these protections adapt and evolve over time;

- Establishing rigorous review processes at the development area specific level (via long-term development plan reviews) and the site-specific level (via subdivision and development permit reviews), which limit shoreland structures and require natural resource inventory submissions and compliance with protective land use standards designed to avoid impacts to high-value habitat features and functions (including wildlife travel corridors and aquatic and riparian habitat function and connectivity);³¹⁸ and
- Establishing a lynx-traffic monitoring plan to ensure that potential traffic and other fragmenting impacts on wildlife will not occur.³¹⁹

(b) The Concept Plan Provides The Requisite Mitigation For Unavoidable Adverse Impact To Wildlife And Plant Resources

The Commission recognizes that the Concept Plan development will result in certain unavoidable habitat loss and consequent adverse impact to wildlife and plant resources. However, the Commission finds that the Concept Plan provides the requisite mitigation for adverse wildlife and plant resources impacts that are otherwise unavoidable. Specifically, the Concept Plan accomplishes this by:

- Establishing long-term development plan review criteria for resort development within D-MH-RT zones that require an enforceable mitigation plan, financial or otherwise, whereby resort developers will need to address any adverse impacts to wildlife or lake resources that arise beyond the boundaries of these development areas;
- Establishing the WISF to fund projects focused on addressing wildlife protection, invasive species prevention, and botanical communities protection needs within and surrounding the Plan Area; and

³¹⁸ Resource protection laws and rules applied at the long-term development plan and subdivision/development permit review phases are specifically designed to minimize impacts on resources such as specific habitat types and wildlife and plant species. For resources vulnerable to cumulative impacts, impacts are avoided or minimized through the application of best management practices at the source of impact – for example, avoidance of corridors to protect specific wildlife habitats and movements. Where the Commission has determined that existing site-specific LURC rules and review processes would not sufficiently address certain impacts attributable to this Concept Plan, new standards and processes have been developed and incorporated into the Concept Plan. For example, the Concept Plan includes long-term development plan review criteria that protect high-value habitat features and functions by (i) “Avoiding where possible and otherwise reasonably minimizing habitat fragmentation and impacts to wildlife travel corridors ... (for example, by avoiding disturbance to unique natural resources or sensitive areas such as late successional forest stands; retiring unused roads upon completion of forestry or development activities; and locating and designing development so as to not obstruct the overland movement of wildlife);” (ii) “Avoiding where possible and otherwise reasonably minimizing impacts to aquatic and riparian habitat function and connectivity ... (for example, by establishing buffer protections along streams, wetland complexes and other water bodies; locating and designing water access sites and shoreland structures to avoid fragmentation of emergent or aquatic bed habitat; and locating and designing development to minimize impacts of unavoidable water crossings);” and “Designing and managing land that is not proposed for development in a manner so as to maintain high-value habitat features and functions” within the development area. (See Concept Plan, Sep. 23, 2009, Sec. II, Sub-Ch. IV, 10.29.C.3.)

³¹⁹ Concept Plan, Sep. 23, 2009, Sec. II, Sub-Ch. IV, 10.30.

- Establishing the MRCE, whose purpose and terms provide enhanced, in perpetuity protections to wildlife and plant resources, including protection of landscape-scale blocks of habitat that are managed to provide wildlife refugia.

(c) The Concept Plan Addresses All Relevant Specific Wildlife and Plant Resources Issues Raised on the Record

Parties, governmental review agencies and members of the public raised a range of issues regarding wildlife and plant resources, including issues specific to species or resource types and issues specific to particular development areas.³²⁰ While several of these issues are discussed in greater detail, below, in reaching its conclusions regarding the impact of the Concept Plan on wildlife and plant resources the Commission carefully considered all of the issues presented on the record.³²¹

In many cases, the Commission amended Plum Creek's proposal in response to issues raised. For example, the Commission amended the Concept Plan to eliminate development from the entire north shore of Long Pond within Plum Creek's ownership. The Commission also excluded from numerous development areas inland waterfowl and wading bird habitat and included within the multi-resource management plan of the MRCE specific and enhanced protections for these and other high-value natural resources. In other cases, the Commission did not accept the basis of public or party views and, accordingly, rejected recommendations made by the public or parties. For example, see paragraphs (i) and (ii) immediately below for the Commission's analysis and conclusions with respect to certain asserted Canada lynx and vernal pool impacts.

Further information on these and other specific wildlife and plant resources issues is contained in the administrative record.

(i) *The Concept Plan Will Not Cause Undue Adverse Impact To Canada Lynx*

A wildlife resource issue of particular interest to the public, parties and governmental review agencies that received careful consideration by the Commission is whether the Concept Plan will adversely impact Canada lynx. Substantial testimony was received covering the status of Canada lynx, its habitat, its presence within and surrounding the Plan Area, threats from direct habitat loss, and threats from traffic. This testimony is summarized in the paragraphs immediately below. According to the record, there is potential for adverse impacts to individual Canada lynx

³²⁰ Examples of these issues are included *supra* at paragraph 9.E.(2).

³²¹ *See, e.g.*, LURC: Staff and Consultants, Sep. 16, 2008, Notebook 2, pp. 5.24-5.25; *see also* LURC: Staff and Consultants, May 26, 2009, Memorandum to Commission: Summary of staff/consultant recommended revisions to March 2, 2009 draft Concept Plan.

(but not the population) from the loss and fragmentation of immediate habitat, and from road mortality.³²²

– *Status And Habitat Of Canada Lynx:*

Canada lynx was listed as a Federally threatened species in 2000 and is listed by MDIFW as a special of special concern.³²³ The prey upon which it depends is snowshoe hare, and its population tends to rise and fall with hare production. Until recently, hare densities were high in many areas in northern Maine, and lynx productivity also was high. More recently, hare populations have declined through northern Maine, and corresponding decreases in lynx productivity have been observed.³²⁴

The optimal habitat for snowshoe hare, and thus lynx, is dense, regenerating softwood forest. The habitat is “ephemeral,”³²⁵ shifting from area to area over time within a large forested landscape based on natural events and forest management practices. “The relationship between boreal forest landscape, Snowshoe Hare density, and lynx density is dynamic and constantly changing. Changes in forest stands can occur through natural disturbance from wind, ice, fire, insect epidemics or from human disturbance. As a result, lynx habitat tends to be patchy and stands of differing ages and conditions that are suitable for foraging or denning change over time.”³²⁶

On February 25, 2009, the Federal government’s final rule for designation of critical habitat for Canada lynx in Maine was published; the area of critical habitat included all of Plum Creek’s lands in the Moosehead Lake region.³²⁷ This designation affects Federal permitting decisions. According to a vegetation analysis by Plum Creek in a 545,000-acre area that included all of the lands in the Concept Plan’s development areas and a majority of the lands in the areas covered by the MRCE or RCE, about 73,000 acres currently contain softwood-dominated boreal conditions and dense understory vegetation to support abundant snowshoe hare populations. Of these acres, 1,459 are located in development

³²² According to MDIFW-MNAP, an increase in road mortality can be expected, but wildlife populations will not be significantly jeopardized. (MDIFW-MNAP, Jul. 11, 2008 filing, p. 2.)

³²³ US FWS, Sep. 17, 2007 filing, p. 7.

³²⁴ US FWS, Sep. 17, 2007 filing, p. 9; MA-NRCM: Struhsacker, Aug. 31, 2007 filing pp. 3-4.

³²⁵ Tr. Jan. 18, 2008, pp. 84-85.

³²⁶ MA-NRCM: Struhsacker, Aug. 31, 2007 filing, p. 4.

³²⁷ MA-NRCM, Apr. 3, 2009 filing, p. 6.

areas (as they were proposed in April 2007) and 49,656 acres are located in areas covered by the conservation easement.³²⁸

- *Presence Of Canada Lynx Within And Surrounding The Plan Area:*

The Plan Area is at the southern edge of a large region of Canada lynx habitat in northern Maine. Lynx are most frequently encountered in areas north of Greenville, Millinocket, and Houlton. According to US FWS, lynx habitat is prevalent on Plum Creek lands on the west side of Moosehead Lake in the “Brassua flats” area (mostly north of Long Pond and Brassua Lake) and, on the east side of Moosehead Lake, north of Lily Bay and Kokadjo.³²⁹ Plum Creek modeled the probability of lynx occupancy in the region based on “regeneration forest factors” and estimated that 66 percent of the study area has a medium or high probability level of lynx occupancy, especially in the northwestern quadrant of the Plan Area (including the “Brassua flats” identified by US FWS) and east of Moosehead Lake, including the Lily Bay development area.³³⁰ MDIFW has mapped occurrences of Canada lynx, as documented by a variety of means. The occurrences are most prevalent in townships north of the Plan Area. Within the Plan Area, a number of occurrences are documented in the area north of Brassua Lake and, on the east side of Moosehead Lake, in Lily Bay Township, Spencer Bay Township, T1 R12 WELS, and in Shawtown Township. Within Lily Bay Township, the occurrences are predominantly in the uplands near the ridgeline of the peninsula and north to the Roach River.³³¹

- *Primary Habitat Needs Of Canada Lynx:*

According to several witnesses, and as established by US FWS as voluntary guidelines for lynx habitat management, the primary habitat needed by Canada lynx is large, contiguous forested areas that contain at least one lynx habitat unit of 35,000 acres for every 200,000 acres of ownership. At any time, about twenty percent of the area in a lynx habitat unit should be in the optimal mid-generation conditions.³³²

³²⁸ Plum Creek: Stabins, Aug. 31, 2007 filing, pp. 10-11 and Exhibit B.

³²⁹ USFWS, Sep. 17, 2007 filing, pp. 9-10.

³³⁰ Plum Creek: Stabins, Aug. 31, 2007 filing, pp. 12-13 and Exhibit D.

³³¹ MA-NRCM: Struhsacker, Aug. 31, 2007 filing, Exhibits 7 and 8.

³³² MA-NRCM: Struhsacker, Aug. 31, 2007 filing, p. 11; Plum Creek: Stabins, Aug. 31, 2007 filing, pp. 20-22; FSM: Hutchinson, Aug. 31, 2007 filing, p. 12.

The Plan Area overlaps or contains two such lynx habitat units that exceed the 35,000-acre/20 percent standard (“North Moosehead Lake,” centered on West Middlesex Canal Grant and Soldierstown Townships, and “Roach Ponds,” centered on Shawtown Township) and two more that approach the 35,000-acre standard with twenty percent optimal mid-generation conditions (“Brassua Lake” centered on Brassua Township and “Ellis Pond,” centered on Chase Stream Township).³³³ All of the Concept Plan lands that are part of these four lynx habitat units are within the lands covered by the MRCE or the RCE.

MA-NRCM witness Struhsacker testified that the four townships of Lily Bay, Spencer Bay, T1 R13 WELS, and Frenchtown “could serve as a ‘lynx habitat unit.’”³³⁴ Except for the 1,852-acre Lily Bay development area, the Concept Plan lands in these four townships will also be covered by one of the permanent conservation easements.

- *Threat To Canada Lynx From Direct Habitat Loss:*

The two development areas of greatest concern in terms of Canada lynx presence and direct habitat loss identified by the US FWS (in reviewing the April 2007 version of the Concept Plan)³³⁵ are the Lily Bay development area north of Casey’s Road³³⁶ and the Long Pond development area, especially the development sub-areas on the north side of the lake.³³⁷ US FWS also identified the Big Moose Mountain development area as a third area of concern, not because of habitat, which is of lesser quality for lynx and where lynx presence has not been documented frequently, but where “associated road traffic through the region will increase the potential for lynx road mortality.”³³⁸ US FWS based its concerns at least in part on traffic projections made by MA-NRCM’s traffic consultant that are significantly higher than the projections accepted by the Commission for impact analysis. (See “Threat to Canada Lynx from Vehicular Traffic,” below.)

³³³ Plum Creek: Stabins, Aug. 31, 2007 filing, p. 21 and Exhibit F.

³³⁴ MA-NRCM: Struhsacker, Aug. 31, 2007 filing, p. 12.

³³⁵ US FWS, Sep. 17, 2007 filing, p. 12.

³³⁶ In October 2007, the Lily Bay development area was proposed by Plum Creek to occupy 4,358 acres. The acreage of this development area has since been reduced to about 1,800 acres (1,000 acres on the north side of Casey’s Road and 800 acres on the south side of Casey’s Road closer to Moosehead Lake), in addition to a 52-acre primitive resort sub-area east of Lily Bay Road), and its boundaries have been pulled back and away from the ridge of the peninsula and do not include any of the MDIFW-documented occurrences of Canada lynx.

³³⁷ In April 2007, the Long Pond development area included acreage along the north shore of Long Pond proposed for development. This development area has since been eliminated.

³³⁸ US FWS, Sep. 17, 2007 filing, p. 12.

Whether the Lily Bay development area's habitat represents quality lynx habitat or has shifted to sub-optimal conditions is a matter of dispute. As noted, US FWS considers it to be within an area of important lynx habitat, and Plum Creek's analysis designates it as an area of high probability for lynx occurrence. However, Daniel Harrison, professor in Wildlife Ecology and a lead researcher on habitat associations of lynx in the Acadian forest of eastern North America, in a public comment filing stated that "the current habitat condition for lynx in Lily Bay is currently well less than optimal." Soil and site conditions in this area favor mature deciduous and mixed forests, and, "if established as a reserve tomorrow, the proposed development area would likely transition into uniformly poor habitat by about 2035."³³⁹

- *Threat To Canada Lynx From Vehicular Traffic:*

Plum Creek and MA-NRCM presented conflicting expert testimony on traffic projected to be generated by the Concept Plan's development. Following requests for additional information³⁴⁰ and detailed questioning of both traffic engineers,³⁴¹ the Commission concluded, and here affirms the conclusion, that the traffic projections prepared by Gorrill-Palmer for Plum Creek are the appropriate basis for analysis of potential impacts on Canada lynx. The following chart summarizes Average Annual Daily Traffic ("AADT") flows at four key points: on two paved, public roads (Lily Bay Road northeast of Lily Bay State Park and Route 6/15 west of Demo Road); and on two private roads that lead to more remote areas (Lily Bay Road at Kokadjo and 20 Mile Road north of Rockwood).³⁴²

³³⁹ Public Comment: Daniel Harrison, Jun. 8, 2008. The Commission notes that neither the US FWS nor Dr. Harrison participated in the proceeding in a manner that permitted cross examination by other parties or the Commission.

³⁴⁰ MA-NRCM: Errico, Jan. 11, 2008, Supplemental Testimony; Plum Creek: Gorrill, Jan. 11, 2008, Supplemental Testimony.

³⁴¹ Tr. Jan. 16, 2008, pp. 14-124.

³⁴² Plum Creek: Gorrill, Jan. 11, 2008, Supplemental Testimony, Figure 1A.

	Lily Bay Rd n/e of State Park	Lily Bay Rd at Kokadjo	Rt. 6/15 west of Demo Rd.	20 Mile Rd. north of Rockwood
2005 AADT (vehicles per day)	630	430	519	300 (est.)
2024 AADT @ 1.5 percent/year background growth plus approved but unbuilt development as of 2007	1263	710	948	459
After full build-out of Concept Plan, all elements	3528	1080	2,282	690
- Increase due to Concept Plan	2265	370	1,334	231
- Portion of this attributable to Lily Bay development (250 resort accommodation units, 154 other residential units, total of 404 units)	1874	208	N/A	N/A

MA-NRCM witness Barbara Charry presented guidelines for traffic volumes to limit impacts to Canada lynx and other wildlife:³⁴³

- Concentrate new traffic on existing high-volume roads (approaching 10,000+ vehicles per day),³⁴⁴
- Avoid increasing roads to 3,000-6,000+ vehicles per day;
- Limit new traffic on 500-1,500 vehicles per day remote roads to less than 2,000 to 2,500 vehicles per day; and
- Limit new traffic on remote/logging roads to less than 300-400 vehicles per day.

Plum Creek witness Bruce Leeson testified that projected traffic levels in the 3,000 to 6,000 vehicles-per-day range would present obstacles but not barriers to wildlife movement.³⁴⁵ MDIFW regarded Charry's guideline of 3,000 to 6,000 vehicles per day as reasonable with respect to carnivores.³⁴⁶

³⁴³ MA-NRCM: Charry, Aug. 31, 2007 filing, p. 33.

³⁴⁴ No roads with such volumes currently exist in the Moosehead Lake region; after Concept Plan build-out, this volume would be approached or exceeded at two locations: within Downtown Greenville and at the entrance to the Big Moose Mountain development area on Route 6/15.

³⁴⁵ Plum Creek: Leeson, Nov. 24, 2007 filing, p. 2; Tr. Jan. 17, 2008, p. 89.

³⁴⁶ Tr., Jan. 18, 2008, pp. 105-106.

Based on the guidelines, the projected traffic at build-out on Lily Bay Road in the vicinity of the Lily Bay development area -- 3,528 vehicles per day -- will be within the range of concern. Traffic volumes in other areas appear to be within acceptable ranges, acknowledging that any increase in traffic through areas with wildlife habitat increases the potential hazard to a number of species and may require management.

MA-NRCM witness Margaret Struhsacker projected that, based on the traffic projections of MA-NRCM consultant Tom Errico, which were two to three times greater than Tom Gorrill's projections, Canada lynx mortality due to road kill may increase to 10-17 per year.³⁴⁷ This projection was based on a US FWS formula that uses wolf mortality data from Wisconsin. However, while witnesses were in broad agreement that a lynx-specific model for predicting road mortality does not exist, witnesses did not agree that a wolf mortality model is an acceptable surrogate for projecting Canada lynx impacts.³⁴⁸

Based on an examination of the record evidence, the Commission amended the Concept Plan to include specific provisions that avoid, minimize and mitigate impacts to Canada lynx. These include:

- Avoidance of direct impacts to Canada lynx habitat by removal of development from the north shore of Long Pond. Thus, the Concept Plan eliminates increased traffic flows that would have otherwise occurred on the Demo Road to and from this area, and now includes no development within the northwestern quadrant of the Concept Plan, where US FWS stated lynx habitat is prevalent and where two of the lynx habitat units cited by Plum Creek witness Henning Stabins are located.³⁴⁹

³⁴⁷ MA-NRCM: Struhsacker, Aug. 31, 2007 filing, pp. 15-18.

³⁴⁸ MA-NRCM and US FWS believe that wolf data are an acceptable surrogate. However, Plum Creek witness Henning Stabins stated that US FWS itself considers the wolf model "a very significant assumption." (Stabins, Tr., Jan. 18, 2008, p. 57.) Plum Creek witness Leeson argued that wolves, as pack animals that "search and chase," and lynx, as solitary animals that "stalk and rush," have different hunting strategies and a "different relationship with a road." (Leeson, Tr., Jan. 16, 2008, pp. 257-258.) Based on lynx and wolf mortality data from overlapping habitat traversed by roads in Canadian national parks with a range of AADTs, he argued that wolves are more likely than lynx to be killed on a road. (Leeson, Tr., Jan. 16, 2008, pp. 258-260.) Struhsacker noted that some of the difference may be explained by "crawl-aways" – lynx injured by automobiles but that make their way into nearby shrubbery and are not found. (Struhsacker, Tr., Jan. 18, 2008, p. 56.) MDIFW witness Jennifer Vashon, a wildlife biologist for the department and the mapper of lynx occurrence in the region, said she did not have enough direct experience with wolves to offer a professional opinion on whether they would be an acceptable surrogate for lynx, "but in my personal opinion, I would think [they] would not." (Vashon, Tr., Jan. 18, 2008, p. 143.)

³⁴⁹ Direct impacts to Canada lynx habitat were also avoided by Plum Creek's earlier withdrawal of all proposed development from Big W Township, from all small ponds in other townships in the northwestern quadrant of the Plan Area, and from the northern peninsula of Brassua Lake.

- Avoidance of direct impacts to Canada lynx habitat by shrinking the size of the Lily Bay development area by 58 percent (from 4,358 acres to 1,852 acres) and removing it from the ridge area of the Lily Bay peninsula where there have been a number of documented occurrences of lynx.
- Minimization of traffic impacts to Canada lynx through a required traffic and Canada lynx monitoring program.³⁵⁰ Under this program, Plum Creek is required to: (i) assess and identify lynx road crossings in the Lily Bay Road area from the northern Beaver Cove town line to a point north of Kokadjo; (ii) monitor traffic to verify and, as necessary, update modeling assumptions; and (iii) monitor lynx to quantify impacts at road segments of concern, guide necessary actions to avoid and minimize impacts, and evaluate the effectiveness of those actions. The Commission will consider the results of the monitoring in its review of subdivision and development permit applications.³⁵¹
- Mitigation of impacts to Canada lynx by the permanent protection of lands covered by the MRCE, which encompass most of the previously identified lynx habitat units and most of the habitat currently suitable for snowshoe hare and lynx as a result of forest practices, and whose terms (including, specifically, the multi-resource management plan that is part of the conservation easement) assure that these lands will act as “refugia” for Canada lynx. This landscape-level habitat conservation approach is not only supported by MDIFW and others, but is cited as the preferred means of protecting lynx habitat in the long term.³⁵²

³⁵⁰ Concept Plan, Sep. 23, 2009, Sec. II, Sub-Ch. IV, 10.30.

³⁵¹ The program was included in the Concept Plan based on a proposal by Plum Creek for an adaptive management approach to Canada lynx in the Lily Bay area (Plum Creek: July 11, 2008 filing, pp. 12-15) and after comments by MA-NRCM that single, point-in-time studies that try to relate impacts to lynx from development would be misleading because there is a lag time between the time of development and the eventual full impacts (MA-NRCM: July 11, 2008 filing, pp. 18-23). While MA-NRCM objected to limiting the monitoring program to the Lily Bay area, arguing that lynx presence on the west side of Moosehead Lake warrants extending the monitoring program to that area (along Route 6/15) as well given the traffic generating potential of a Big Moose Mountain resort and the presence of a possible wildlife corridor west of Brassua Lake, traffic projections at build-out do not indicate that traffic levels will reach the threshold level of concern (3,000 vpd) on Route 6/15 between Brassua Lake and the Long Pond Township boundary. The Commission notes, however, that applicants for development on the west side of Moosehead Lake will need to address the question of wildlife impacts as part of subsequent permit applications.

³⁵² MDIFW assumes that habitat functions and values within the development area at Lily Bay “will be significantly degraded. Similarly, we have viewed the surrounding compensatory easement lands as refugia that, if managed appropriately, will in fact compensate for development impacts by ensuring the long-term preservation of potential habitat” (MDIFW-MNAP, Jul. 11, 2008 filing, pp. 2-3). FSM asserted that concerns about proposed development at Lily Bay significantly and adversely affecting the Canada lynx population “is not true. The loss of several hundred acres at the fringe of the North Woods...will be inconsequential to the viability of lynx in Maine. However, what is extremely consequential...is the threat of further development into the core of the lynx range....The conservation outcomes proposed as part of ZP707 will prevent that threat of further development on more than 400,000 acres, and, further, will create a network of conserved lands approaching 2 million acres in size – in the heart of the essential range for lynx in Maine” (FSM: Hutchinson, Aug. 31, 2007 filing, pp. 12-13). MA-NRCM witness Margaret Struhsacker stated that “when you do look at mitigation...the Fish & Wildlife Service expects a lot...Plum Creek hasn’t shown that they, within any of their management

Based on the facts and analysis above, the Commission finds that potential impacts to Canada lynx attributable to the Concept Plan are sufficiently avoided, minimized and mitigated, and therefore concludes that the Concept Plan will not cause undue adverse impact to Canada lynx.

(ii) *The Concept Plan Will Not Cause Undue Adverse Impact To Vernal Pools Within The Lily Bay Development Area*

The record establishes that several vernal pools of unknown significance are located within the Lily Bay development area.³⁵³ However, the Commission is not persuaded that the identification of these vernal pools necessarily signifies the presence of “a complex and valuable system that would be severely degraded and compromised” by the Concept Plan proposal.³⁵⁴

Consistent with longstanding LURC practice, the Commission required reconnaissance-level natural resource surveys to evaluate this rezoning and will require more detailed natural resources inventories at subsequent permit review stages. Thus, a comprehensive vernal pool inventory of the development areas was neither conducted nor required for this proceeding, nor was pool significance determined (via egg mass counts) for those vernal pools that were incidentally recorded as part of the reconnaissance surveys. The record is, however, well developed with respect to best practices for vernal pool protections.³⁵⁵ The record is also clear that rezoning does not imply approval of any particular development project that may subsequently be proposed within a given development area.³⁵⁶

plan...there’s no binding language that they’re really going to preserve those regions for lynx habitat to not only maintain but to improve” (Tr. Jan. 18, 2008, p. 41).

³⁵³ Plum Creek: Sep. 2, 2008 filing; Plum Creek: Woodlot Alternatives, Aug. 31, 2007 filing, Exhibit 5, p. 10.

³⁵⁴ MA-NRCM, Sep. 12, 2008 filing, p. 4.

³⁵⁵ See, e.g., MA-NRCM: Charry, Aug. 31, 2007 filing, pp. 16-18; US FWS, Aug. 31, 2007 filing, pp. 109-120; MDIFW-MNAP Aug. 31, 2007 filing, pp. 10, 19. The most rigorous protections appear to be embodied in the US FWS recommendations to the Commission, which include (i) avoidance of impacts to the vernal pools and the habitat within 100 feet of the pool’s edge, (ii) minimization of impacts to the “critical terrestrial habitat” within 100-750 feet of the pool’s edge, and (iii) where vernal pools appear in clusters, provision for forested corridors to connect the pools.

³⁵⁶ Each individual development project will receive subsequent Commission review based upon detailed, site-specific information submitted in connection with permit applications, at which time the Commission will evaluate, *inter alia*, whether the project complies with the Commission’s “harmonious fit” criterion (Ch. 10.24 of the Commission’s rules).

Consequently, the Commission amended the Concept Plan to put in place processes and standards that ensure the appropriate identification and protection of significant vernal pools at subsequent permit review stages³⁵⁷ and concluded that it is feasible to develop up to 404 units and associated resort-related facilities and infrastructure in the Lily Bay development area while protecting vernal pools utilizing the best practices as presented in the record. In fact, the size of the Lily Bay development area and possible use of the northern portion of the development area are predicated on the possibility that there are one or more significant vernal pools that may be discovered during the subsequent permit review processes, and that the developer may need to provide the requisite buffers around them. The Commission further notes that the burden rests with the applicant to again demonstrate the feasibility of developing the Lily Bay development area without causing undue adverse effect to natural resources, including vernal pools, at subsequent review stages.

Based on this, the Commission rejects certain parties' recommendations to scale back or eliminate Lily Bay development on the basis that development would cause undue adverse impacts to vernal pools, and finds based on this record that it is plausible to develop up to 404 units and associated resort-related facilities and infrastructure without causing undue adverse impact to vernal pools within the Lily Bay development area.

(iii) *The Terms Of The MRCE Provide Sufficient Long-Term Protection Of Special Management Areas*

Several parties and governmental review agencies offered testimony and comment regarding the adequacy of protections offered for so-called "special management areas" – lands within the Plan Area that MNAP deems to be particularly ecologically valuable. Specifically, these special management areas consist of the following rare and exemplary natural communities and ecosystems:

- A Spruce-Fir-Northern Hardwoods Ecosystem (S4B), Fragrant Cliff Wood-fern site (S3), and White Cedar Woodland (S2), located in the upper elevations of Big Moose Mountain;
- A Spruce-Fir-Northern Hardwoods Forest (S4A) and Upper Floodplain Hardwood Forest (S3B) within the Big Wilson Stream ecosystem; and
- A Subalpine Fir Forest (S3) located in the upper elevations of Baker and Lily Bay Mountains.

³⁵⁷ For example, the Concept Plan requires a long-term development plan for the Lily Bay development area as a first step toward applying for subdivision and development permits, in part to assure that proposed development takes into account development area-scale wildlife resources.

Two parties (MA-NRCM and MRFC) opposed protecting these lands through their inclusion in the MRCE, arguing that it was unlikely that the lands would receive sufficient protection under the conservation easement, and that these lands should instead be donated in fee. BPL asked the Commission to be “aware that recent experiences here in Maine with multiple existing working forest easements and forest certification systems have led us to recognize that the standard ‘conserve and protect’ language is insufficient” for protecting these special management areas. And, while MDIFW and MNAP recommended these lands be excluded from the MRCE and instead be donated in fee to the State of Maine, the agencies did not oppose the protection of these areas through conservation easement terms if special harvesting standards applied to these areas (“...if the LURC Commission remains committed to conserving these values through the easement process, it is crucial that more specific, outcome based performance measures be developed in close consultation with MNAP ecologists and/or MDIFW biologists and that sufficient funds are allocated for a rigorous monitoring system for old growth/late successional areas to ensure the public values are adequately protected.”).

On the record of this proceeding, the Commission cannot find that the donation of these lands to the State of Maine is regulatorily required in order to provide sufficient protection to these three special management areas. While such fee land transfers may indeed be warranted under many circumstances,³⁵⁸ the Commission finds that the Commission-amended provisions of the Concept Plan are sufficient to avoid undue adverse impacts to these three special management areas, and further finds that the Concept Plan achieves the necessary long-term protection of these particular high-value natural resources. Specifically, the MRCE requires that all forest management activities on the protected property must be conducted in accordance with an accompanying multi-resource management plan, which sets forth very specific and measurable limits on forest management and harvesting practices for each of these three areas, as well as for other natural areas. For example, the plan establishes permanent “no harvest” ecological reserves within each of the three special management areas and sets forth harvesting limits for the “non-reserve” areas of the remaining portions of these areas. These restrictions were recommended to the Commission and approved by MNAP.³⁵⁹

³⁵⁸ For example, the Commission finds that the Roaches Ponds Tract will better serve its intended mitigation purpose as a result of the fee transfer of this property to AMC, an organization with a long-standing history and record of land management for purposes of providing non-exclusive primitive recreational opportunities to the public.

³⁵⁹ MNAP, Apr. 3, 2007 filing.

The Commission agrees with BPL's comments, which emphasize that, "Easement language and baselines must be express and clear to avoid debate in perpetuity about the extent of economic loss the landowner should expect, and the process which must be followed as science evolves on best practices...". (emphasis in original) It is solely because of the permanent, express, clear, measurable and enforceable protections contained in the multi-resource management plan that the Commission finds that the Concept Plan provides sufficient long-term protection of these special management areas, and therefore rejects recommendations that these areas be protected through fee land transfers to the State of Maine.

(iv) *The Concept Plan Will Not Cause Undue Adverse Impact To Any Other Wildlife Or Plant Resources Raised On The Record*

Various other potential adverse wildlife or plant impacts were raised on the record, albeit to a lesser extent than those discussed above. In each case, as with all such potential adverse impacts raised on the record, the Commission applied its "avoid, minimize and mitigate" approach. In many such instances, the Commission required amendments to the Concept Plan to ensure any potential adverse impacts would not be undue. For example, with respect to deer wintering areas, rare and exemplary natural communities and ecosystems, inland waterfowl and wading bird habitats, aquatic habitats and riparian buffers, vernal pools, and loon nests, the Commission required specific protections in the multi-resource management plan attached to the MRCE. In light of these and other specific protective measures contained in the Concept Plan, and based upon all the evidence before it, the Commission finds that the Concept Plan will not cause undue adverse impact to these or any other wildlife or plant resources identified on the record.

(d) Conclusions

Based on its review of the record evidence, the Commission concludes that the Concept Plan will cause no undue adverse impacts to wildlife and plant resources within and surrounding the Plan Area. Further, the Commission concludes that, due to the unique long-term planning opportunities afforded by concept planning and regulatorily required conservation measures specific to concept plans, the Concept Plan better protects wildlife and plant resources than the Commission's existing zoning framework.³⁶⁰

³⁶⁰ See paragraph 9.C.

(3) **The Proposed Land Use District Has No Undue Adverse Impact On Existing Community Uses Or Resources**

Impact on community services is a consideration in determining whether a proposed rezoning will have an undue adverse impact on resources or uses.³⁶¹ Several documents submitted for the record analyzed community services and fiscal impacts.³⁶² These analyses evaluated whether community impacts will arise at build-out based upon:

- An addition of approximately 700,000 visitor days by tourists in the region, including those who will stay in 1,050 overnight accommodation units in resorts within the Plan Area, additional induced demand at other lodgings, and day trippers to the region;
- A projected 145 year-round households living in single-family homes built on residential lots;
- A projected 390 year-round households living in other dwellings in the region, a portion of which will be resort housing for employees and affordable housing built on land to be donated by Plum Creek; and
- Seasonal households living in 830 single-family homes built on Plum Creek lots (these 830 homes plus the 145 projected to be occupied by year-round households equal the 975 homes proposed outside of resort areas by Plum Creek for this Concept Plan).³⁶³

The community services evaluated for impact by parties and governmental review agencies included transportation, waste management, water supply, fire protection and emergency services, police and law enforcement, education, health care, and general government services. The evaluations examined the capacity to provide services and the fiscal impacts on communities and other public agencies.

Based on a review of these evaluations and the record at large, the Commission finds that most of these community services are likely to have sufficient capacity to serve the development contemplated by the Concept Plan. Where such capacity does not presently exist, the Commission finds that the likely pace of development will allow these services to catch up with demand. In addition, because the matter before the Commission is a rezoning petition, the focus in evaluating community impacts is on the feasibility of providing community services without undue adverse impact on governments and communities – that is, does capacity exist or is there evidence that it can be created without an undue burden on providers, given the projected amount, location, and pace of development proposed? The details of how the service will be provided (for example,

³⁶¹ See LURC: Apr. 1, 2004, Clarifying the Rezoning Criterion of “Demonstrated Need,” p. 3; *see also* paragraph 9.D.(2).

³⁶² E.g., Plum Creek: Colgan, Aug. 31, 2007 filing; Plum Creek: Shrum, Aug. 31, 2007 filing; Plum Creek: Lawton, Aug. 31, 2007 filing; LURC: Richert, Aug. 31, 2007, Preliminary Review of Community and Fiscal Impact Analyses; MaineDOT: Feb. 26, 2008, Traffic Movement Permit, Reg. 03-00014-A-N.

³⁶³ Plum Creek: Colgan, Aug. 31, 2007 filing, pp. 16-17; Plum Creek: Shrum, Aug. 31, 2007 filing, Exhibit 2, pp. 18-21, 45-46, 81; LURC: Richert, Aug. 31, 2007, Preliminary Review of Community and Fiscal Impact Analyses, pp. 5-6.

direct hauling of solid waste to licensed disposal sites versus using a local transfer station) must be presented, with additional documentation by providers of the services that the arrangements are satisfactory to them, at the time of submission of subdivision or development permit applications for proposals within the Plan Area. The Commission therefore concludes that the Concept Plan will have no undue adverse impacts on community services.

The facts and analysis supporting the Commission's conclusion with respect to certain specific community services are presented in the paragraphs immediately below. Further information on these and other community resources is contained in the administrative record.

(a) The Concept Plan Will Not Cause Undue Adverse Impact To Transportation Infrastructure Or Traffic Safety³⁶⁴

At build-out, the Concept Plan development is projected to generate 1,301 trips during the afternoon peak weekday hour and nearly 18,000 total trips during a full weekday, and 1,476 trips during the Saturday peak hour and about 16,500 total trips during a full Saturday.³⁶⁵

These projections and the trip generation rates from which they were made, along with the assignments of the traffic across different parts of the region's road network, were reviewed and approved by the Maine Department of Transportation ("MaineDOT") as part of the department's review of a traffic movement permit application filed by Plum Creek. On February 26, 2008, MaineDOT issued a traffic movement permit for Plum Creek's 2007 Concept Plan conditioned on a package of mitigation measures, both on-site and off-site. By way of example, the measures include:

- Implementing specified geometric standards at all entrances to public roads, with specific improvements at specified driveways for safe turning movements into development areas;
- Intersection improvements in the Wharf Junction/Deport Street area in Greenville;

³⁶⁴ In response to the filing of MaineDOT's traffic movement permit, MA-NRCM also submitted comments that questioned the permit's relevance to such issues before the Commission as potential impacts of traffic on wildlife. (MA-NRCM, May 8, 2008 filing.) MaineDOT did not address or purport to address the Concept Plan's potential impacts to wildlife, wildlife habitat or recreation in the permit, which are issues within the Commission's jurisdiction. The Commission responded that, while the terms of the MaineDOT traffic movement permit likely will enhance, e.g., recreational opportunities, which are of direct interest to the Commission, the Commission would not consider "the mere issuance of the [Traffic Movement] Permit to have resolved any issues within the Commission's jurisdiction," and that these issues would be independently reviewed. For findings concerning the impact of traffic on Canada lynx, see paragraph 9.E.(2).

³⁶⁵ Plum Creek: Gorrill, Aug. 31, 2007 filing, pp. 8-10. Data reflect August conditions and also assume that a new sawmill in the existing Commercial-Industrial (D-CI) Subdistrict will have been constructed in the Plan Area at build-out.

- Bicycle/pedestrian accommodations within each subdivision for use by owners of the subdivision, including, for subdivisions within one-half mile of an established activity center in Rockwood with commercial or public services, a connection to the center;
- A one-time fee of \$40,000 to support design and implementation of bicycle and pedestrian facilities in downtown Greenville;
- A bicycle/pedestrian connection from Greenville to Lily Bay State Park and to the Lily Bay Resort;
- Traffic control at the intersection of Route 6/15 and Lily Bay Road in Greenville;
- Several shoulder and lane improvements and speed control measures on Route 6/15 between Greenville and Rockwood;
- Improvements to Lily Bay Road to reduce curves in the road; and
- Intersection and lane improvements in Dexter and Guilford. Many of the mitigation measures will be triggered when the first 100 and 200 peak hour trips are developed on the west or east side of Moosehead Lake.

While certain parties acknowledged that the conditions of the traffic movement permit would create infrastructure for bicycling and walking,³⁶⁶ parties also advocated for more comprehensive treatment of alternative modes of transportation, including the arrangement of development that would be conducive to such alternative modes.³⁶⁷ MRFC also argued for a construction management plan to address congestion, safety, noise, and dust during construction.³⁶⁸

The Commission finds that the traffic movement permit addresses those issues uniquely within MaineDOT's jurisdiction, namely traffic safety and congestion. On those issues, the Commission considers the MaineDOT permit to be dispositive. (The Commission notes that, as part of any long-term development plans, subdivision or development permit applications, the applicant will need to petition MaineDOT to amend the traffic movement permit to assure that the language of the permit aligns with the terms of the Concept Plan.) With respect to development design, the Commission finds that the Concept Plan recognizes the need to balance competing objectives (such as minimizing hillside scenic impacts, which tends to require larger lots with substantial vegetative buffers, and achieving efficiencies in land use, which reduces auto-dependency but may result in greater scenic impacts in concentrated areas). The Commission finds that by including provisions for organizing development around community centers and

³⁶⁶ GROWSMART, Jul. 14, 2008 filing, p. 5.

³⁶⁷ GROWSMART, Jul. 14, 2008 filing, p. 5; MRFC, Mar. 7, 2008 filing, p. 8.

³⁶⁸ MRFC, Mar. 7, 2008 filing, p. 8.

an option for compact residential development, the Concept Plan is more conducive to alternative transportation modes than traditional subdivision designs.³⁶⁹ As discussed *supra*, the Commission also finds that provisions exist within the Concept Plan to consider impacts of construction traffic at the time of subdivision or development permit review.

(b) The Concept Plan Will Not Cause Undue Adverse Impact To The Provision Of Waste Management Services

Waste management entails several forms of solid waste – land clearing debris, construction and demolition debris, municipal solid waste, and universal and bulky waste – and sludge from septic systems and potentially other wastewater treatment systems. Each of these forms of solid waste is discussed below:

(i) *Land Clearing Debris:*

Land clearing debris is proposed to be reused on site, processed for use as erosion control material, disposed of on site within the rules of the DEP, or converted to biomass for energy production.³⁷⁰ For each development, detailed information will be required for review by DEP.³⁷¹

(ii) *Construction And Demolition Debris:*

The Concept Plan development is projected to generate 11,075 tons of construction and demolition debris (CDD). Plum Creek presented a signed letter from Waste Management Disposal Services of Maine stating that the company's licensed Crossroads landfill in Norridgewock, Maine, has capacity to accommodate this debris.³⁷² DEP recommended that all CDD be hauled directly to the Crossroads landfill rather than through area transfer stations.³⁷³ The Commission finds that this is a matter that is most appropriate to be determined as part of each subdivision or development permit review.

(iii) *Municipal Solid Waste:*

The Concept Plan development is projected at build-out to generate a 2,655 tons of municipal solid waste ("MSW") per year. Plum Creek presented a signed letter from Waste Management Disposal Services that

³⁶⁹ Concept Plan, Sep. 23, 2009, Sec. II, Sub-Ch. III, 10.25.Q.3.

³⁷⁰ Plum Creek: Small, Aug. 31, 2007 filing, p. 2.

³⁷¹ DEP, Aug. 31, 2007 filing, p. 3.

³⁷² Plum Creek: Shrum, Aug. 31, 2007 filing, Exhibit 2b and p. 130 (letter from Juniper Ridge Landfill).

³⁷³ DEP, Aug. 31, 2007 filing, p. 3.

it has capacity at the Crossroads landfill for this waste.³⁷⁴ Plum Creek asserted that it will encourage the reuse and recycling of all waste categories through the voluntary programs of Piscataquis and Somerset Counties and by direct contract with recycling companies.

The Commission finds that the MSW generated by residential lots can be picked up at “curbside,” as recommended by DEP³⁷⁵ or taken to transfer stations. Existing transfer stations in Rockwood and Lily Bay will likely need to be expanded and/or days of operation increased to handle the additional volumes. Officials of Piscataquis and Somerset Counties stated that the growth will be incremental and that they can handle the expansions, and in any case would like to expand as the need justifies it.³⁷⁶ The Commission also finds that impact of MSW from residential development on Greenville’s landfill/transfer station can be absorbed under existing arrangements, and for other wastes brought to the facility, users pay for what they deposit there.³⁷⁷ Finally, MSW from resort developments are required by the Concept Plan to be handled independently by the resorts, with documentation submitted as part of long-term development plans for the resort development areas.³⁷⁸

(iv) *Universal And Bulky Waste:*

The Concept Plan development is projected to generate 3,500 units of universal waste per year and 525 tons per year of bulky waste.³⁷⁹ Plum Creek presented a signed letter from Waste Management Disposal Services that it has capacity at the Crossroads landfill for bulky waste.³⁸⁰ Universal waste is proposed to be in part recycled through the programs of Piscataquis and Somerset Counties and, to the extent that it is not, can be accepted at the Crossroads landfill.³⁸¹ DEP noted that the quantity of material could overwhelm existing recycling service providers.³⁸² The Commission finds that it is reasonable to expect that recycling services will expand to accommodate demand, and that, in any case, overall capacity exists to handle the universal and bulky wastes projected to be generated by Concept Plan development.

³⁷⁴ Plum Creek: Shrum, Aug. 31, 2007 filing, Exhibit 2b and p. 132 (letter of capacity from the Penobscot Energy Recovery Company in Orrington).

³⁷⁵ DEP, Aug. 31, 2007 filing, p. 2.

³⁷⁶ Tr. Dec. 13, 2007, pp. 46, 96-102.

³⁷⁷ Tr. Dec. 12, 2007, pp. 328-330; GV: Simko, Jul. 25, 2007 filing, p. 5.

³⁷⁸ Concept Plan, Sep. 23, 2009, Sec. II, Sub-Ch. IV, 10.29.

³⁷⁹ Plum Creek: Shrum, Aug. 31, 2007 filing, Exhibit 2, p. 64.

³⁸⁰ Plum Creek: Shrum, Aug. 31, 2007 filing, Exhibit 2b.

³⁸¹ Plum Creek: Shrum, Aug. 31, 2007 filing, Exhibits 2a and 2b.

³⁸² DEP, Aug. 31, 2007 filing, p. 2.

(v) *Liquid Waste:*

At build-out, the residential development is projected to generate 112,000 gallons of septic tank waste per year, assuming the tanks are cleaned out on a regular cycle. In addition, depending on the type of wastewater disposal that is chosen and approved for the proposed resorts, they could generate between 75 and 300 tons per year of sewage sludge.³⁸³ Soil Preparation, Inc., of Plymouth and New England Organics' Hawk Ridge compost facility in Unity both presented signed letters stating they have capacity to accept the septic tank waste and the sewage sludge, respectively.³⁸⁴ However, distance to these facilities is longer than DEP standards allow. In the case of septic tank sludge, the Moosehead Sanitary District has applied to DEP to allow acceptance of up to 408,000 gallons per year at its sewage treatment plant in Greenville. In the case of sludge from resort wastewater treatment facilities, Plum Creek proposed that disposal at one of the local wastewater treatment facilities would be a possible option.

The Commission finds that several feasible options exist to handle septage from both residential and resort development. For example, septage capacity in the region would be expanded if the Moosehead Sanitary District obtains DEP approval to expand capacity at its sewage treatment plant. With respect to residential waste, another option is for Plum Creek to identify a site for and develop a septic tank waste transfer facility as a controlled way station en route to Plymouth. With respect to resort-generated sludge, the sludge could be delivered to the Hawk Ridge facility, so long as measures are taken to stabilize and/or store the material sufficient to meet DEP requirements. This would be required as part of DEP licensing of the facilities.³⁸⁵ Documentation that one or more of these options will be in place in a timely manner will be a required as part of subdivision and development permit applications.

(c) The Concept Plan Will Not Cause Undue Adverse Impact To Water Supply

The DWP reviewed geologic information presented by Plum Creek and determined that it appears likely that public water supply wells can be successfully located and developed to serve the proposed resort areas.³⁸⁶ Further, the Concept Plan requires a demonstration, as part of the filing of a long-term development plan, that resort development will be reasonably self-sufficient in providing for its water supply.

³⁸³ Plum Creek: Small, Aug. 31, 2007 filing, p. 4.

³⁸⁴ Plum Creek: Shrum, Aug. 31, 2007 filing, pp. 131, 133.

³⁸⁵ DEP, Aug. 31, 2007 filing, p. 3.

³⁸⁶ DWP, Aug. 31, 2007 filing.

(d) The Concept Plan Will Not Cause Undue Adverse Impact To Fire Protection And Emergency Services

The Concept Plan development is projected to generate approximately 75 to 80 new fire-related dispatches per year, once the development is built out. Service currently is provided (depending on location) by the Greenville Volunteer Fire Department, the Jackman-Moose River Fire Department, and the Rockwood Fire Department. The Maine Forest Service provides forest fire protection and frequently responds to structural fires, sometimes as a first responder, in order to prevent their spread to surrounding forests. Response times from these providers to the most distant proposed developments in their respective service areas are between 19 and 26 minutes.³⁸⁷

The Rockwood Fire Department presently is under-equipped and undermanned to handle a significant increase in calls, and all departments face the challenge of mustering volunteers during times of the day when the volunteers are away at jobs. Mitigating factors cited by Plum Creek are that (i) development that includes year-round households, including households moving to the area for development-induced jobs, will create a fresh supply of potential volunteers; (ii) the development will occur over a period of up to 30 years and therefore will not constitute a shock to the system; and (iii) the resorts will be equipped to provide first-responder services.³⁸⁸ The Concept Plan in fact requires resorts to demonstrate as part of their long-term development plans how they will independently supply fire protection services without impact on existing departments, whether through direct services or through contractual agreements with the departments.³⁸⁹ In addition, suppression methods such as residential sprinklers are available.³⁹⁰ Local officials are confident that the capacity of small departments will grow as development occurs.³⁹¹

The Concept Plan development is projected to generate approximately 160 new ambulance calls per year once the development is built out. Ambulance services in the Plan Area are provided by Charles A. Dean Hospital in Greenville and Jackman Region Health Center. Most of the Plan Area is within the service area of CA Dean Hospital. The hospital's chief executive officer asserts that the development will increase its capacity to provide emergency and health services, and that the problems of distance can be reduced by the training of first responders, as would be common, for example, in resort areas.³⁹² Further, Life Flight of Maine maintains landing areas in the Plan Area, and Plum Creek is required to provide land for additional landing areas if and when the Commission

³⁸⁷ Plum Creek: Shrum, Aug. 31, 2007 filing, pp. 103-106.

³⁸⁸ Plum Creek: Shrum, Aug. 31, 2007 filing, p. 107.

³⁸⁹ Concept Plan, Sep. 23, 2009, Sec. II, Sub-Ch. IV, 10.29.

³⁹⁰ Tr. Dec. 13, 2007, p. 115.

³⁹¹ Tr. Dec. 13, 2007, pp. 72-80.

³⁹² Tr. Dec. 12, 2007, pp. 292-294.

in consultation with emergency service providers determines they will be needed as the result of long-term development plans or subdivision and development permit applications.³⁹³

Piscataquis County stated that it has the capacity and resources to fill gaps in emergency communications (cell phone and radio) coverage in the county.³⁹⁴ In addition, Plum Creek will consult with the Town of Greenville to identify a timetable and the means to bring power to an emergency radio emergency repeater station on Big Moose Mountain.³⁹⁵

Based on testimony from the service providers and on an analysis of the availability of funds to expand certain governmental services (*see* paragraph (i), below), the Commission finds that the Concept Plan addresses fire protection and emergency service sufficiently to avoid undue adverse impacts.

(e) The Concept Plan Will Not Cause Undue Adverse Impact To Law Enforcement Services

At build-out, the Concept Plan development is projected to generate 275-300 calls annually to police and sheriff's departments. Law enforcement in the Plan Area is provided by the Piscataquis and Somerset Counties Sheriff's Departments, the Greenville Police Department (in Greenville and neighboring Beaver Cove), and, though its personnel reside primarily in the Dover-Foxcroft area, the State of Maine Police. County sheriffs' response times can be lengthy, in the 30-90 minute range.³⁹⁶ Piscataquis County indicated it is planning to increase law enforcement capacity in the Greenville area in anticipation of the Concept Plan development.³⁹⁷

The Commission finds that existing law enforcement agencies will need to expand as a result of the influx of transient construction and seasonal workers, crimes of opportunity associated with the increase in seasonal and resort properties, and increased traffic violations. The fiscal impact study conducted for the Concept Plan (*see* paragraph (i) below) determined that resources to fund the expansion of services will become available as the development that demands the services is put into place, and testimony from the governmental agencies primarily responsible for law enforcement – namely, the two counties and the Town of Greenville – is supportive of the Concept Plan. Therefore, the Commission finds that the Concept Plan will not have an undue adverse impact on law enforcement services.

³⁹³ Concept Plan, Sep. 23, 2009, Sec. I.

³⁹⁴ PI, Aug. 31, 2007 filing, p. 4.

³⁹⁵ Concept Plan, Sep. 23, 2009, Sec. I.

³⁹⁶ Plum Creek: Shrum, Aug. 31, 2007 filing, pp. 86-95.

³⁹⁷ PI, Aug. 31, 2007 filing, p. 3.

(f) The Concept Plan Will Not Cause Undue Adverse Impact To Public Education Services

The direct and induced population increase attributable to the Concept Plan is projected to increase public school enrollment by about 241 students.³⁹⁸ According to inventories and analyses presented to the Commission, the school administrative units serving the area – MSAD #12, School Union #60, and the UT’s Rockwood Elementary School – all have suffered declines in enrollment over the past decade and all have capacity to accept the projected increases from the development. There was skepticism expressed by some parties that the Concept Plan’s development would benefit school enrollment, based on historical data that show declines in enrollment as seasonal housing development increased.³⁹⁹ However, the record suggests that if there is an increase, it would benefit rather than stress the school systems.⁴⁰⁰

(g) The Concept Plan Will Not Cause Undue Adverse Impact To Other General Government Services

General government services (besides those already discussed) include maintenance of public roads, registration, administrative, permitting, and enforcement services, as well as public services and infrastructure such as municipal libraries and public parks and wharves. The primary providers of these services are the counties, the Towns of Greenville and Jackman and the Land Use Regulation Commission. Counties are responsible for road maintenance and provide other countywide services, such as Registries of Deeds. Among the general government services provided by the municipalities are: fishing and hunting licenses, motor vehicle registration, recreation vehicle registration, voting booths, tracking of vital statistics records, public library, municipal recreational facilities, and maintenance of local streets and sidewalks for visitors as well as town residents. The Land Use Regulation Commission provides planning and permitting/code enforcement services.

The record indicates that increased demand for most of these services can be absorbed by the providing agencies, although two areas are either currently deficient or likely to be stressed by the proposed development – namely, certain infrastructure and services in Greenville, such as space in the Shaw Public Library, and LURC permitting and compliance monitoring.⁴⁰¹

³⁹⁸ Plum Creek: Shrum, Aug. 31, 2007 filing, p. 83.

³⁹⁹ Tr. Dec. 12, 2007, pp. 277-278.

⁴⁰⁰ Tr. Dec. 12, 2007, pp. 301-305.

⁴⁰¹ Plum Creek: Shrum, Aug. 31, 2007 filing, pp. 56-58; MRFC: Nov. 20, 2007 filing, p. 2; MRFC: Mar. 7, 2008 filing, p. 45.

In light of the availability of funds to expand certain governmental services (*see* paragraph (i), below), and Concept Plan provisions that establish a mandatory, annual third-party inspection and reporting system financed by subdivision homeowners associations to assist the Commission in the enforcement of vegetation clearing and water quality standards,⁴⁰² the Commission finds that these government services will not be unduly adversely impacted by the Concept Plan.

(h) The Concept Plan Will Not Cause Undue Adverse Impact To The Commercial Viability Of Existing Businesses

Certain parties contend that Concept Plan development will have an undue adverse impact on the commercial viability of businesses surrounding the plan area, particularly in downtown Greenville.⁴⁰³ The concern arises from Concept Plan provisions that allow commercial uses in certain development areas, including limited commercial development in the Rockwood/Blue Ridge development area, and more permissive commercial development zone in the Lily Bay development area.

The Commission finds that the record includes no objective analysis that such impacts will occur. Nonetheless, the D-MH-RS1 zone at Rockwood/Blue Ridge limits commercial development to residential-scale (by special exception) and limits the amount of non-residential development to an aggregate land area of 50 acres. The D-MH-RT zone at Lily Bay limits commercial activities to those that are nature-based or that support the functions or the management of a nature-based resort development, and prohibits large-scale or destination shopping developments.

Moreover, downtown Greenville is in an intercepting position for virtually all of the traffic that will be headed to Lily Bay, and most other development on both sides of Moosehead Lake. At build-out, the traffic level through downtown is projected to triple from current volumes to more than 15,000 AADT.⁴⁰⁴ While this will require Plum Creek to build or install improvements according to its Traffic Movement Permit from MaineDOT (*see* paragraph 9.E.(3), above), it also will benefit downtown businesses.

The Commission concludes that the Concept Plan development will not have an undue adverse economic impact on existing businesses, including those located in downtown Greenville, and may benefit those businesses.

⁴⁰² Concept Plan, Sep. 23, 2009, Appendix B, Sec. B.

⁴⁰³ *See, e.g.*, MA-NRCM: Jul. 11, 2008 filing; MRFC: Jul. 11, 2008 filing, pp. 4-5.

⁴⁰⁴ Plum Creek: Gorrill, Jan. 14, 2008, Supplemental Testimony, Figure 1A.

(i) The Concept Plan Will Have A Net Fiscal Benefit On Governmental Service Providers

Plum Creek conducted a detailed fiscal analysis of the potential revenues and expenses affecting the governmental agencies that will provide a range of public services to the development in the Plan Area.⁴⁰⁵ The analysis was peer reviewed by Commission staff and consultants.⁴⁰⁶ While there was criticism of the petitioner's analysis, especially for not addressing potential externalities,⁴⁰⁷ no alternative analysis was offered. Representatives of the local, county, and State governmental agencies did not dispute the analysis or its conclusions.

Plum Creek's study projected that the Concept Plan development, if fully put into place as proposed and if current tax rates remain unchanged, will generate average annual revenues from all sources to State, county and local levels of government of about \$13.5 million, and will generate average annual expenses of about \$4.3 million. These funds theoretically would be available to enable service providers to expand services to meet increased demands from the development.

However, the analysis concluded that the distribution of revenues to the levels and agencies of government responsible for providing the services and infrastructure will be uneven. In some instances the governmental entity providing the service will be a direct recipient of the revenues required to pay for it. This is true, for example, of property taxes raised by the counties (through assessments on the Unorganized Territory and municipalities) to pay for county services, and of direct fees for service, such as user and tipping fees for solid waste disposal. But in key instances, this nexus does not exist. There is no guarantee that State revenues will make their way to the agencies responsible for State-level services to new homes and visitors (this is a decision of the Legislature).

Moreover, the organized service centers of Greenville and Jackman will experience demand for increased police and other services but will not receive property taxes directly generated by the Concept Plan development.

The study concluded that Greenville and Jackman will approximately break even at full build-out. These towns will receive revenues as a result of contracts with the Unorganized Territory to share certain costs and to receive payments for services, such as fire protection, and State revenue sharing; and Greenville will receive fees required under the MaineDOT's traffic movement permit. But some costs, including the indirect cost of providing municipal services to non-profit institutions (such as hospitals) that serve the larger region but are tax exempt, will have to come out of their property tax systems.

⁴⁰⁵ Plum Creek: Lawton, Aug. 31, 2007 filing; Plum Creek: Lawton, Sep. 28, 2007 filing.

⁴⁰⁶ LURC: Richert, Aug. 31, 2007, Preliminary Review of Community and Fiscal Impact Analyses, pp. 21-23.

⁴⁰⁷ MA-NRCM: Philips, Aug. 31, 2007 filing.

Greenville's Town Manager argued for State-level reform to even out the disparities between services provided to UT residents and seasonal homeowners and the costs borne by communities like Greenville.⁴⁰⁸ Nevertheless, as to this specific Concept Plan, the Town Manager concluded that impacts on local infrastructure and services will be manageable.⁴⁰⁹

(j) Conclusions

From the record evidence, the Commission concludes that many of the community services and related infrastructure to be used by the development within the Plan Area presently have adequate capacity to serve the development at full build-out. These include: schools, disposal facilities for solid waste (MSW, CDD, universal waste, and bulky waste), water resources for domestic water supply (to be put into place by the developments), most general governmental services, hospitals and emergency rooms, and ambulance service. With the adherence to rules and implementation of conditions of permits from other agencies, capacity also exists for management of traffic and other forms of transportation on public roads and the re-use or disposal of land clearing debris.

As set forth *supra*, the Commission concludes that a number of other services do not presently have capacity to serve the development at full build-out. However, in each case either the development will be required as part of long-term development plans or subdivision or development review permits to provide for or contribute to the expansion of the affected service, or the development will generate user fees or tax revenues sufficient to expand the service or infrastructure as the governmental agency receiving the revenues deems appropriate. In all cases, the likely pace of development will allow the services, whether instituted by the respective governmental agency or by the developer, to catch up with demand. These include:

- *Transfer Facilities For Solid Waste, Recycling Services, And Septic Tank Sludge Disposal:*

The first two of these are expandable by the governmental agencies that sponsor them with taxes and/or fees collected as a result of the development. For septic tank sludge disposal, capacity for disposal at licensed sites exists, but rules require proper handling at a location closer to the development site. Options include potential expansion of this service at the Moosehead Sanitary District's facilities or the permitting and construction by the petitioner of a septic tank waste transfer station en route to the licensed disposal site. In either case, the generators of the waste typically pay directly for the service. Final determination of the

⁴⁰⁸ GV: Simko, Aug. 31, 2007 filing, p. 2; Tr. Dec. 12, 2007, pp. 332-336.

⁴⁰⁹ GV: Simko, Aug. 31, 2007 filing, p. 1.

selected option will be made at the time of long-term development plan, subdivision, and/or development permit application review.

- *Some Areas of Structural Fire Protection:*

The Rockwood Fire Department has a small number of volunteers and limited equipment, and for all fire departments mustering volunteers away at jobs is a challenge. Local and county officials advise that capacity will grow along with development, the taxes that the development will generate, and the expanded pool of volunteers from among workers associated with the new development. The proposed resorts will be required to demonstrate, through aid agreements and/or built-in resources, capacity to provide fire protection in their developments. At the subdivision and development permit application stage, the Commission may consider whether residential fire suppression systems may be required to assure fire safety.

- *Law Enforcement:*

County Sheriff personnel are located long response times away from the Concept Plan's development areas, and Greenville's jurisdiction is limited and does not provide 24-hour service. However, record evidence shows that the development will generate revenues to enable expansion of sheriffs' coverage, as UT, Piscataquis and Somerset county officials may deem appropriate.

- *Demand For Certain State-Level Services:*

Demand for some State-level services may also exceed existing capacities of the agencies providing them. Record evidence demonstrates that the development requiring these services will generate tax revenues sufficient to pay for them, but the decision to allocate the resources to the agencies rests with the Legislature. These include forest fire protection, search and rescue, and land use/building permitting and enforcement. In addition to revenues attributable to the Concept Plan's development, the Concept Plan requires the petitioner to assist in these areas by providing for additional helicopter landing areas for rescue and medical missions and by incorporating into Declarations governing new subdivisions a requirement for independent, third-party reviews for ongoing compliance with standards relating to vegetation clearing and water quality.

Therefore, the Commission concludes that the Concept Plan will not have an undue adverse impact on community services.

(4) **The Proposed Land Use District Has No Undue Adverse Impact On Other Existing Natural Or Cultural Uses Or Resources**

In addition to those resources and uses specifically discussed above, the record contains information regarding a range of other resources and uses existing within and surrounding the Plan Area, including: (i) air resources; (ii) cultural, historical and archaeological resources; (iii) geologic, mineral and mountain resources; (iv) forest resources; and (v) water resources. Detailed descriptions and locations of these existing natural and cultural resources are contained in the administrative record.

In evaluating the Commission's statutory rezoning criterion of "no undue adverse impact on existing uses and resources" as this criterion pertains to these resources, the Commission draws upon, *inter alia*, the following regulatory materials:

- The principal values of “[d]iverse, abundant and unique high-value natural resources and features, including ... fish and wildlife resources, ecological values ...” and “[n]atural character values, which include the uniqueness of a vast forested area that is largely undeveloped and remote from population centers.”⁴¹⁰
- The Commission's specific goals and policies pertaining to natural resources,⁴¹¹ including: (i) the goal to protect and enhance the quality of air resources throughout the jurisdiction, and the policy to require compliance with all State and Federal air quality standards; (ii) the goal to protect and enhance archaeological and historical resources of cultural significance, and the policy to identify and protect unique, rare and representative cultural resources; (iii) the goal to conserve, protect and enhance the forest resources which are essential to the economy of the State of Maine and the jurisdiction, and the policy to discourage development that will interfere unreasonably with continued timber and wood fiber production; (iv) the goals to conserve soil and geological resources by controlling erosion and protecting areas of significance, allow environmentally responsible exploration and mining of mineral resources where there are not overriding conflicting public values which require protection, and conserve and protect the values of high mountain areas from undue adverse impacts; and (v) the goal to preserve, protect and enhance the quality and quantity of surface and ground water, and the policy to regulate uses to prevent degradation of water quality and undue harm to natural habitats.
- The lake-specific management classifications and resource values identified as significant or outstanding in the Commission's Wildlands Lakes Assessment for lakes within the Plan Area.⁴¹²

⁴¹⁰ CLUP, 1997, p. 114.

⁴¹¹ CLUP, 1997, pp. 135-139.

⁴¹² Appendix C of Ch. 10, the Commission's rules.

Throughout the proceeding, numerous parties, governmental review agencies, and members of the public presented information, analysis and argument regarding the Concept Plan's impacts on these natural and cultural resources. Issues presented in testimony and comments, as well as during adjudicatory hearings, included the following:

- *Regarding Air Resources:*

Whether air emissions from construction activities associated with development and motor vehicle traffic will impact air quality, and whether the Concept Plan will have a material effect on greenhouse gas emissions and climate change.⁴¹³

- *Regarding Cultural, Archaeological And Historical Resources:*

Whether the Concept Plan will result in undue adverse impacts to known cultural, archaeological and historical resources, and what provision has been made for identifying and protecting presently unknown cultural, archaeological and historical resources located within the Plan Area.⁴¹⁴

- *Regarding Forest Resources:*

What effect will the Concept Plan have on wood supply and the forestry industry, and what provision has been made to avoid adverse impacts from parcelization and forestland fragmentation.⁴¹⁵

- *Regarding Geologic, Mineral And Mountain Resources:*

Whether the soils information submitted by Plum Creek is reliable and sufficient to evaluate this rezoning petition, whether suitable soils exist to accommodate proposed development, whether the presence of unsuitable or less suitable soils within development areas would preclude the Commission's ability to direct development to areas with most suitable soils as part of subsequent permit reviews, whether the Concept Plan makes adequate provision for a long-term supply of drinking water, and whether known sand and gravel aquifers are adequately protected from adverse land use impacts.⁴¹⁶

- *Regarding Noise Impacts:*

Whether the Concept Plan will result in an increase in noise pollution that would adversely impact existing resources and uses.⁴¹⁷

⁴¹³ E.g., GROWSMART: Hawes and Howland, Aug. 31, 2007 filing; NFN: Dowling and Waters, Aug. 31, 2007 filing; Plum Creek: Harrington, Aug. 31, 2007 filing.

⁴¹⁴ E.g., MHPC, Aug. 31, 2007 filing; MHPC, Oct. 1, 2007 filing; Plum Creek: Cowie and Sharoun, Aug. 31, 2007 filing.

⁴¹⁵ Impacts to forest resources, including impacts on fiber production, are more fully discussed at paragraph 9.C.

⁴¹⁶ E.g., AGRI, Aug. 31, 2007 filing; MRFC: Bakajza, Aug. 31, 2007 filing; Plum Creek: Howell, Aug. 31, 2007 filing.

⁴¹⁷ E.g., Plum Creek: Sciremammano, Aug. 31, 2007 filing; MA-NRCM Apr. 3, 2009 filing; Rand Acoustics, Mar. 25, 2009, Public Comment; Tr. Jan 18, 2008, pp. 230-237.

- *Regarding Water Quality:*

Whether adequate provision has been made to avoid degradation of the water quality of the numerous lakes, ponds, rivers and streams within and surrounding the Plan Area, including sensitive waters such as Class GPA lakes and ponds and Class A streams,⁴¹⁸ thereby affecting the quality of salmon and wild brook trout habitat.⁴¹⁹

In reaching its conclusions regarding the impacts of the Concept Plan on existing resources and uses, the Commission evaluated these and other natural and cultural resources issues based on the record evidence presented by parties, governmental review agencies and members of the public. A number of these issues are discussed in detail, below.

Where the Commission found record evidence to be compelling, it amended the Concept Plan accordingly. For example, with respect to drinking water and groundwater resources, based on the governmental review agency comments and recommendations submitted by the Maine Geological Survey (“MGS”) and the Drinking Water Program (“DWP”) and subsequent questioning of MGS and DWP representatives during the adjudicatory hearing,⁴²⁰ the Commission amended the Concept Plan to require a demonstration, as part of the filing of a long-term development plan, that resort development will be reasonably self-sufficient in providing for its water supply. The Commission also amended the Concept Plan to include a provision that limits the land uses located over a known mapped sand and gravel aquifer within the Lily Bay development area to those that neither significantly reduce the recharge capability of the area nor threaten groundwater quality.

Where the Commission did not accept the basis of public or party views, it rejected the relevant recommendations made by the public or parties. For example, see paragraphs (i) - (iii), below, for the Commission’s analysis and conclusions with respect to carbon emissions, water quality impacts, and noise impacts. In other instances, the Commission accepted certain public, party or governmental review agency testimony that supported making no changes to the Concept Plan. For example, see paragraphs (iv) - (vi), below, for the Commission’s analysis and conclusions with respect to air quality impacts, cultural, archaeological and historical resources impacts, and soils suitability.

Additional information on these and other existing resources and uses, including how the Commission addressed many of the issues presented on the record, are contained in the administrative record.

⁴¹⁸ E.g., DEP, Aug. 31, 2007 filing; DEP, Nov. 20, 2007 filing; FEN-RESTORE: Gordon, Aug. 31, 2007 filing; MA-NRCM: Quebbeman, Aug. 31, 2007 filing; NFN: Posner, Aug. 31, 2007 filing; PI SWCD, Aug. 31, 2007 filing; Plum Creek: Sciremammano, Aug. 31, 2007 filing; Petition, Oct. 27, 2007, Petition for Rezoning, Appendix C; and SO SWCD, Aug. 31, 2007 filing; US EPA, Aug. 31, 2007 filing.

⁴¹⁹ E.g., MA-NRCM: Kulik, Aug. 31, 2007 filing; Plum Creek: Arsenault and Pelletier, Aug. 31, 2007 filing, p.13; Plum Creek: Kirchies, Aug. 31, 2007 filing.

⁴²⁰ DWP, Jul. 31, 2007 filing; MGS, Aug. 29, 2007 filing; Tr. Dec. 13, 2007, pp. 126-130.

(a) The Concept Plan Will Not Materially Contribute To State, National Or Global Carbon Emissions

The Commission recognizes the critical importance of the issue of global warming and acknowledges from the undisputed record evidence⁴²¹ that the impacts of carbon emissions from unregulated changes in land use – including conversion of forestland to non-forest uses such as development – not only pose a potential threat to public health, safety and welfare, but may also result in adverse impacts to natural resources, including biodiversity and water quality.

However, the Commission finds that certain Concept Plan provisions serve to avoid or reduce such potential threats to public, safety and welfare and impacts to existing natural resources, including, *inter alia*, maintaining perpetually as a working forest approximately 400,000 acres of land, locating development areas proximate to existing settlements and public roadways, and minimizing forestland conversion within development areas vis-à-vis long-term development plan reviews that require developments to use land efficiently.

This finding, in combination with the fact that LURC does not currently administer any statute or regulation that sets forth any express standard with respect to carbon emissions, leads the Commission to conclude that additional measures recommended by certain parties (e.g., imposition of energy efficiency building standards), which may indeed be effective in further reducing adverse impacts from carbon commissions, are not required as part of this Concept Plan.

(b) The Concept Plan Will Not Cause Undue Adverse Impact To Water Quality

While legitimate questions have been raised regarding the feasibility of developing certain development areas without violating State of Maine water quality standards,⁴²² the Commission agrees with DEP's conclusions⁴²³ that a determination of whether, where and how much development can occur in development areas cannot be made until site-specific details of a proposal, in combination with more detailed baseline water quality data and analysis, are presented to the Commission first as part of long-term development plans (which will indicate, *e.g.*, the types and general locations of major infrastructure dealing with wastewater disposal and storm water systems) and in subsequent subdivision and development permit applications.

⁴²¹ E.g., Tr. Jan. 8, 2008, pp. 38-49.

⁴²² The Commission's water quality standards require that structures and uses proposed on land adjacent to lakes "will not, alone or in conjunction with other development, have an undue adverse impact on water quality." Ch.10.25,A(2) of the Commission's rules; *see also* 12 M.R.S.A. § 685-A(8-A)(B). The water quality standards for GPA water bodies (38 M.R.S.A. § 465-A(1)(C) require that "...change of land use in the watershed of a Class GPA water body may not, by itself or in combination with other activities, cause water quality degradation that impairs the characteristics and designated uses of downstream GPA waters or causes an increase in the trophic state of those GPA waters." The water quality standards for Class A streams (38 M.R.S.A. § 465(2)(A) and (B)) require that the habitat of the stream must be characterized "as natural" and the aquatic life in the stream must be "as naturally occurs."

⁴²³ DEP, Aug. 31, 2007 filing; DEP, Nov. 20, 2007 filing. *See also* Tr., Jan. 18, 2008, pp. 307-319.

The Commission finds that the provisions of the Concept Plan ensure that specific water quality information (such as detailed phosphorus export evaluations of specific development proposals) must be presented with subsequent permit applications, that the burden remains on the applicant to demonstrate that proposed development will not violate water quality standards, and that Plum Creek understands that compliance with these standards could severely restrict the amount, location and/or nature of development within certain development areas or portions thereof, including the number of units permitted therein.⁴²⁴ Further, the Commission finds that nothing in the Concept Plan precludes it from imposing measures as part of subsequent permit reviews to ensure that water quality is protected, including imposition of permit conditions of approval (to, for example, build out development sequentially in sensitive areas, require long-term maintenance of BMPs, and monitor water quality and the effectiveness of BMPs and other pollution control measures) or denial of permit applications.

Therefore, the Commission finds that the Concept Plan will cause no undue adverse impact to water resources, including the quality of waters in Class A streams and Class GPA lakes and ponds.

(c) The Concept Plan Will Not Cause Undue Adverse Noise Impacts

MA-NRCM commented that the noise standards contained in Ch. 10.25 of the Commission's rules should be replaced with a comprehensive "soundscape" plan such as is used in the National Park Service, designed for "outdoor preserves or natural wilderness environs." This concept was similarly advanced by Rand Acoustics.⁴²⁵ However, these comments did not provide specific suggestions, did not appear to recognize that the noise standards in the Concept Plan were amended by the Commission to be identical to the Commission's jurisdiction-wide standards, and did not suggest how standards geared toward "a pristine and natural ecological wilderness lands" would comport with the activities of a working forest. Therefore, the Commission does not accept these recommendations and instead concurs with Plum Creek's expert witness Frank Sciremammano⁴²⁶ that the noise standards contained in the Concept Plan are adequate to assure no undue adverse noise impacts resulting from the development.

⁴²⁴ E.g., Tr., Jan. 18, 2008, p. 245; Plum Creek, Mar. 7, 2007 filing, pp. 113-114.

⁴²⁵ MA-NRCM, Apr. 3, 2009 filing; Public Comment: Rand Acoustics, Mar. 25, 2009.

⁴²⁶ Plum Creek: Sciremammano, Aug. 31, 2007 filing, Exhibit 3, p. 8.

(d) The Concept Plan Will Not Cause Undue Adverse Impact To Air Quality

The Commission concurs with the conclusions of Plum Creek witness Jeffrey Harrington that:

- The traffic growth projected from implementation of the Concept Plan will not lead to violations of State or Federal air quality laws and standards;
- Nuisance issues such as dust generated from construction traffic are matters that can be addressed at subsequent subdivision and development review stages; and
- Certain types of facilities permitted in specific land use zones within the Plan Area (e.g., sawmills in the D-MH-CI zone, fuel burning equipment associated with resort development) will be subject to the State air emission licensing program and will be required to maintain compliance with State and Federal air quality laws and standards.⁴²⁷

(e) The Concept Plan Will Not Cause Undue Adverse Impact To Cultural, Archaeological And Historical Resources

Based on extensive research and archaeological survey work conducted by Plum Creek witnesses, Ellen Cowie and Stephen Sharoun – all of which was planned and conducted in close consultation with and oversight by the Maine Historic Preservation Commission (“MHPC”) – and further based on cross examination of Dr. Cowie, Mr. Sharoun, and MHPC Director, Dr. Arthur Spiess,⁴²⁸ the Commission finds that:

- There is a high likelihood that archaeological and historical resources of varying levels of significance exist within the Plan Area and some of these resources are likely to meet the eligibility criteria for listing in the National Registry of Historic Places;⁴²⁹
- Based on detailed development-area recommendations made by Plum Creek witnesses, which were endorsed by Dr. Spiess and have been fully committed to by Plum Creek, additional detailed archaeological survey work will be conducted well in advance of future development or subdivision permit applications filed with LURC;⁴³⁰ and

⁴²⁷ E.g., Plum Creek: Harrington, Aug. 31, 2007 filing; Tr. Dec. 13, 2007, pp. 128-129.

⁴²⁸ See Tr. Dec. 14, 2007, pp. 141-172.

⁴²⁹ Tr. Dec. 14, 2007, pp. 155-156, 164.

⁴³⁰ See Petition, Oct. 27, 2007, Petition for Rezoning, Tab 13, p. 3.; Plum Creek: Cowie and Sharoun, Aug. 31, 2007 filing, pp. 137-141; MHPC, Aug. 31, 2007 filing; Tr. Dec. 14, 2007, pp. 170-172.

- The means to mitigate adverse impacts to archaeological and historical resources, whether they are known now or discovered during subsequent survey work, are well established (e.g., legal or physical protections of the resource, or archaeological data recovery) and are best determined at the site-specific permit review phase.⁴³¹

(f) The Concept Plan Will Not Cause Undue Adverse Impact To Soils Resources

With respect to certain issues related to soils suitability, the Commission finds that:

- The reconnaissance-level soils analyses conducted by Plum Creek witness Stephen Howell, in close coordination with and oversight by the State Soil Scientist David Rocque, provide sufficient information for purposes of evaluating the impacts of this rezoning petition;
- While sufficient areas of suitable soils are likely to exist within each development area to accommodate the contemplated development, the development areas are likely to also contain soils that are unsuitable or less suitable for development;⁴³² and
- The provisions of the Concept Plan and Ch. 10.25 of the Commission's rules are sufficient to allow it to require additional detailed soils surveys as part of subsequent permit application reviews, and to direct development within development areas to sites with the most suitable soils (thereby avoiding or minimizing reliance on technological solutions if such solutions have questionable environmental impact or long-term effectiveness) if the Commission determines such direction is necessary in order to fit development harmoniously into the natural environment.

(5) Conclusions

In summary, based on a thorough review of the record evidence and analysis of the means by which the provisions of the Concept Plan avoid, minimize and mitigate adverse impacts, the Commission concludes that the Concept Plan will cause no undue adverse impact to existing uses or resources within and surrounding the Plan Area.

⁴³¹ Tr. Dec. 14, 2007, pp. 155-156.

⁴³² Tr. Dec. 13, 2007, p. 94.

F. The Proposed Land Use District Is Consistent With The P-RP Subdistrict (12 M.R.S.A. § 685(8-A)(A)) And Its Criteria For Approval (Ch. 10.23,H Of The Commission’s Rules)

The Commission may adopt or amend a land use district boundary if there is substantial evidence that, *inter alia*, the proposed land use district “is consistent with the standards for district boundaries in effect at the time...” (12 M.R.S.A. § 685(8-A)(A)) This statutory provision means that the Commission may approve a concept plan only if it finds that the following standards for P-RP Subdistricts, contained in Ch. 10.23,H of the Commission’s rules and in effect both at the time that Plum Creek filed its original Zoning Petition ZP 707 in April 2005 and as of the date of this decision, are satisfied:

- The plan conforms with redistricting criteria and the CLUP;⁴³³
- The plan conforms, where applicable, with the Commission’s Land Use Districts and Standards (Ch. 10);⁴³⁴
- The plan includes in its purpose the protection of those resources in need of protection;
- Any development gained through any waiver of the adjacency criterion is matched by comparable conservation measures;
- The plan strikes a reasonable and publicly beneficial balance between appropriate development and long-term conservation of lake resources; and
- Conservation measures apply in perpetuity, except where it is demonstrated by clear and convincing evidence that other alternative conservation measures fully provide for long-term protection or conservation.

In evaluating the Concept Plan against these standards, the Commission also was guided by its guidance document in determining the acceptability of the proposed holders of the conservation easements.⁴³⁵ Further, throughout the proceeding many parties, governmental review agencies and members of the public filed testimony and comments regarding these standards, and in particular the standards addressing the conservation elements contained in the Concept Plan.⁴³⁶

⁴³³ The Commission’s findings and conclusions regarding the Concept Plan’s conformance with the statutory criteria for adoption or amendment of land use district boundaries (12 M.R.S.A. § 685-A(8-A)) and the CLUP are set forth in paragraphs 9.B. – 9.E.

⁴³⁴ Plum Creek, through Zoning Petition ZP 707, does not concurrently seek approval of any detailed, site-specific development proposals, although seeking such concurrent development approval is a permissible request under Concept Plans. As such, the Commission limited its consideration of the Concept Plan’s conformance with its Land Use Districts and Standards (Ch. 10) to a review of whether it would be feasible for anticipated site-specific developments to comply with the Commission’s rules applicable to subdivision and development permit reviews. The Commission also considered such regulatory feasibility in assessing, *inter alia*, the Concept Plan’s consistency with the CLUP (*see* paragraph 9.B.), its satisfaction of the “demonstrated need” criterion (*see* paragraph 9.D.), and whether the Concept Plan would have undue adverse impact on existing uses or resources (*see* paragraph 9.E.).

⁴³⁵ LURC: Nov. 10, 2004, Guidelines for Selection of Conservation Easement Holders.

⁴³⁶ Matters pertaining to the conservation easements were considered during two days of adjudicatory hearings on on January 22, 2008 and January 23, 2008, when witnesses for Plum Creek, AMC, FEN-RESTORE, FSM, MA-NRCM, MILLS, MRFC, NFN and TNC, and representatives of MDIFW, MFS, MNAP, and the State Planning Office (“SPO”), were subject to cross examination by parties and questioning by the Commission and its staff and consultants on matters pertaining to the conservation elements contained in Plum Creek’s October 2007 Concept Plan. Both prior and subsequent to the adjudicatory hearings, parties, governmental review agencies

Much of this testimony and comment focused on the sufficiency of the specific terms of the conservation easements for meeting these standards.⁴³⁷

This section addresses the Commission's determination with respect to these standards. Many of the comments presented on the record led the Commission to make material amendments to the Concept Plan's conservation elements, including the location, size and timing of these conservation elements, as well as numerous terms of the MRCE and the wholesale addition of a second conservation easement for the Roaches Ponds Tract.⁴³⁸ These changes in the location, size, timing, and terms of the conservation elements of the Concept Plan were only made where the Commission determined that such amendments were necessary to ensure that the Concept Plan and the associated change in zoning satisfy the governing review criteria related to the location, amount and nature of conservation – specifically, the “balance” criterion (Ch. 10.23,H,6,f of the Commission's rules), the “comparable conservation” criterion (Ch. 10.23,H,6,d of the Commission's rules), and the requirement for Plum Creek to mitigate for certain adverse impacts from development that would otherwise constitute undue adverse impacts to existing uses and resources (particularly impacts to wildlife, scenic and recreational resources⁴³⁹) and therefore be prohibited by 12 M.R.S.A. § 685-A(8-A)(B). The Commission is also obligated to ensure that the protections afforded by the conservation elements are legal, readily enforceable, and can be effectively administered by the conservation easement holder and, where applicable, the third party holder.⁴⁴⁰

Several parties, governmental review agencies and members of the public recommended changes to the conservation elements that the Commission did not accept because it found that such recommendations were either not supported by the record evidence or were beyond the scope of the regulatory requirements applicable to concept plans. Thus, while the conservation elements in general and the MRCE and RCE in particular may not contain all of the terms that parties and agencies recommended to the Commission or that otherwise might be contained in a privately negotiated conservation easement, the MRCE and RCE are the culmination of a regulatory process whose terms are those the Commission finds necessary to satisfy the governing review criteria.

and members of the public were afforded numerous opportunities to comment on all aspects of the conservation elements, including the location and amount of conservation being proposed and the specific terms of conservation easements.

⁴³⁷ E.g., AMC: Publicover, Aug. 31, 2007 filing; AMC: Publicover, Nov. 11, 2007 filing; BPL, Aug. 31, 2007 filing; BPL, Nov. 20, 2007 filing; FEN-RESTORE: Spalding, Aug. 31, 2007 filing; FEN-RESTORE: Lake, Spalding, Sep. 14, 2007 filing; FEN-RESTORE: Lake, Spalding, Nov. 11, 2007 filing; FSM: Hutchinson, Aug. 31, 2007 filing; MA-NRCM: Bryan and Johnson, Aug. 31, 2007 filing; MA-NRCM: Johnson, Sep. 14, 2007 filing; MA-NRCM: Bryan and Johnson, Nov. 11, 2007 filing; MDIFW-MNAP, Aug. 31, 2007 filing; MDIFW-MNAP, Sep. 14, 2007 filing; MDIFW-MNAP, Nov. 20, 2007 filing; MRFC: Guethlen, Aug. 31, 2007 filing; MRFC: Guethlen, Nov. 20, 2007 filing; NFN: Paine, Aug. 31, 2007 filing; NFN: Paine, Sep. 14, 2007 filing; Plum Creek: Cantrell, Kraft, Lehner and Stabins, Aug. 31, 2007 filing; SPO, Sep. 14, 2007 filing; SPO, Nov. 20, 2007 filing; TNC: Rumpf, Tetreault and Vickery, Aug. 31, 2007 filing. *See also* Staff/consultants, Sept. 16, 2008, Notebook 2 for examples of the issues raised by these parties.

⁴³⁸ These changes are generally described at paragraph 7.F.(23). Specific details regarding these amendments and the issues raised by parties, governmental review agencies and members of the public are contained in the administrative record.

⁴³⁹ *See* paragraph 9.E. for the Commission's evaluation of whether the Concept Plan will cause an undue adverse impact on existing uses or resources.

⁴⁴⁰ *See* paragraph 9.F.(4) for the Commission's evaluation of the enforceability and effectiveness of the Concept Plan's conservation elements.

(1) **The Concept Plan Includes In Its Purpose The Protection Of Those Resources In Need Of Protection (Ch. 10.23,H,6,e Of The Commission’s Rules)**

One of the foundational purposes of the Concept Plan is to protect from harm the existing natural and cultural resources located within and surrounding the Plan Area, including the forest resources, wildlife and plant resources, recreational and scenic resources, and community resources.⁴⁴¹ These are the resources that the CLUP recognizes as comprising the principal values which make the jurisdiction – including the Moosehead Lake region – so special.

The Commission finds that the Concept Plan includes specific provisions that assure that these existing resources and, consequently, the four principal values are permanently protected from threats that they face absent the Concept Plan – particularly threats stemming from incremental, haphazard development.⁴⁴² These provisions significantly restrict and regulate land uses not only on the lands protected by the terms of the MRCE and the RCE but also within the development areas themselves. They include:

- Numerous significant restrictions regarding the location, scale and nature of development within the 15,812 acres that comprise the Concept Plan development areas, and rigorous land use standards and processes, all of which are designed to protect existing resources,⁴⁴³ as well as explicit acknowledgment and reinforcement of the Commission’s legal authority at subsequent development review stages to require detailed resource inventories to determine or confirm the presence of natural resources within areas proposed for development and to protect those resources from harm, including by continuing to apply the natural resources protections afforded by the Commission’s Protection Subdistricts as these protections adapt and evolve over time.
- For the approximately 392,666 acres that are collectively subject to the MRCE and RCE, the permanent prohibition of residential development, and numerous significant permanent restrictions on the location, scale and nature of non-residential development. The restrictions contained in these two conservation easements collectively will forever protect a combination of forestland values, aquatic resources and wetland values, wildlife, plant and natural community values, recreational values, and scenic values at a landscape scale.⁴⁴⁴

Based on these and other provisions contained in the Concept Plan, the Commission finds that the Concept Plan includes in its purpose the protection of those resources in need of protection.

⁴⁴¹ These resources are generally described in paragraph 9.A. and more specifically discussed in paragraph 9.E.

⁴⁴² See paragraph 9.C.(3) for details regarding the threats facing existing resources and uses within the affected area, absent the Concept Plan.

⁴⁴³ See paragraph 9.B.(3) for a summary of key provisions within the Concept Plan that assure development is located so as to protect the jurisdiction’s principal values. See also paragraph 9.E for detailed descriptions of the means by which the Concept Plan assures that no undue adverse impacts occur to existing resources.

⁴⁴⁴ See Concept Plan, Sep. 23, 2009, Appendices C and H.

(2) **The Concept Plan Strikes A Reasonable And Publicly Beneficial Balance Between Appropriate Development And Long-Term Conservation Of Lake Resources (Ch. 10.23,H,6,f Of The Commission’s Rules)**

Unlike other governing review criteria applicable to concept plans whose purposes are predominantly to prevent harm and protect the public’s health, safety and welfare,⁴⁴⁵ the criterion that a concept plan must strike “a reasonable and publicly beneficial balance between appropriate development and long-term conservation” is intended to assure that both the landowner and the public are receiving benefits as a result of the Concept Plan that neither would be entitled to in its absence, and that these benefits are “balanced” between “appropriate development” and “long-term conservation” in a manner that is publicly beneficial.

For the landowner, these benefits include being permitted to develop certain lands that would not otherwise be permitted under the Commission’s traditional zoning framework, provided the development is “appropriate.” For example, the Concept Plan provides certain waivers of the Commission’s adjacency criterion, whereby Plum Creek obtains zoning authority to develop in locations and at a scale and pace that is not afforded through the Commission’s typical zoning approach. The Concept Plan also provides Plum Creek with predictability regarding certain Commission actions related to (i) where development will and will not be allowed in the Plan Area, (ii) the type of development that will and will not be allowed in each development area, (iii) the maximum number of dwelling units and overnight accommodation units permitted within the thirty-year term of the Concept Plan, and (iv) the development standards and procedures that will remain static versus those that may change during the term of the Concept Plan. While the Commission’s approval of the Concept Plan does not constitute a pre-approval of any subsequent required permits within the Plan Area, Concept Plan approval does represent a commitment by the Commission that the development described in this Concept Plan is acceptable to the Commission provided that any subdivision or other development proposed within the Plan Area is consistent with the purposes, descriptions and permitted uses set forth in the applicable Concept Plan land use zones, meets the Commission’s statutory and regulatory criteria, and otherwise complies with the Concept Plan’s provisions.

For the public, the benefits include substantial long-term conservation and access to recreational resources to which it would not be entitled in the Concept Plan’s absence.⁴⁴⁶ At its most basic level, these public entitlements are (i) the protection of natural and cultural resources (including recreational and scenic resources) through the permanent

⁴⁴⁵ E.g., “The proposed land use district has no undue adverse impact on existing uses or resources,” 12 M.R.S.A. § 685-A(8-A)(B); and “The plan, taken as a whole, is at least as protective of the natural environment as the subdistricts which it replaces,” Ch. 10.23,H of the Commission’s rules.

⁴⁴⁶ Specifically, in describing concept plans, the CLUP states that the “landowner gains from the insight obtained in preparing the plan, from expanded flexibility in making land management decisions, and from increased predictability regarding Commission actions” and that the “public gains from the improved planning that results from comprehensive evaluations of lake-related recreational and natural resources, from provisions for the protection of resources, from greater knowledge of future development patterns, and from the increased predictability of the development review process.” (CLUP, 1997, p. C6.)

elimination of certain threats⁴⁴⁷ to these resources, as provided for pursuant to the terms of the MRCE, and (ii) the legal guarantee of public access to use and enjoy those resources permanently, as provided for pursuant to the terms of the MRCE and some of the additional plan elements such as the three recreational trail systems (ITS snowmobile, hiking, and Mahoosucs-to-Moosehead).

While the Commission interprets this criterion to mean that substantial public entitlements must be provided upon approval of a concept plan, and finds that they are in this Concept Plan, it also finds that the required “balance” can only be struck if the Concept Plan development is appropriate and if resources are sufficiently conserved. Below, the Commission presents the facts and analyses that lead it to conclude that the Concept Plan does indeed strike a balance between appropriate development and long-term conservation that is both reasonable and publicly beneficial.

(a) The Concept Plan Ensures That Development Is Appropriate

Although several parties contend that the Commission was swayed by the benefits of the Concept Plan’s conservation elements in evaluating the appropriateness of certain development areas,⁴⁴⁸ this contention is not accurate. In fact, as set forth in paragraphs 9.B. – 9.E., the Commission carefully evaluated the development components of the Concept Plan from numerous vantage points, including whether the scale of proposed development as a whole and as proposed for each development area (i) is consistent with the CLUP, (ii) is more appropriate for the protection and management of uses and resources than existing zoning, (iii) satisfies a demonstrated need, and (iv) causes any undue adverse impacts to existing resources and uses within and surrounding the Plan Area. Based on these evaluations, and the resulting numerous and substantial amendments made by the Commission to the location, type and scale of the development originally proposed by Plum Creek, the Commission finds that the Concept Plan development elements:

- Are consistent with the CLUP goals and policies regarding the location of development;
- Avoid both cumulative and individual undue adverse impacts to the jurisdiction’s principal values, including the natural character and remoteness within and surrounding the Plan Area;

⁴⁴⁷ These threats include the degradation of natural and cultural resources that are likely to occur under the Commission’s traditional zoning framework and the potential loss of traditional public access, particularly for outdoor recreation. *See* paragraph 9.C. for further details regarding the threats to existing resources and uses within the affected area absent the Concept Plan.

⁴⁴⁸ E.g., FEN-RESTORE, Jul. 11, 2008 filing, pp. 19-22; and MA-NRCM, Jul. 11, 2008 filing pp. 16-17, 24-25.

- Avoid both cumulative and individual undue adverse impacts to natural, cultural and community resources and uses;
- Ensure the separation of incompatible uses;
- Contribute to satisfying a public need for orderly, prospective, well-planned growth in the region; and
- Contribute to achieving the Commission’s vision for the jurisdiction.

Based on these findings, the Commission concludes that the Concept Plan development is “appropriate,” meaning the development elements are of a location, type and scale, and are governed by rigorous land use standards and review processes such that the tests stated above have been met. Had the Commission alternatively found that the Concept Plan development failed to meet any of these tests, it would have concluded that the development was not “appropriate” and, pursuant to Ch. 10.23,H,6,f, no amount or type of conservation would have been able to reverse this conclusion and thus this regulatory requirement would not have been satisfied.

(b) The Concept Plan Provides Publicly Beneficial Conservation Which Includes The Conservation Of Lake Resources

In evaluating the Concept Plan in light of the “long-term conservation” requirement, the Commission examined whether the Concept Plan’s conservation elements provide both:

- The minimum amount of conservation necessary to accomplish the comprehensive planning objective of concept plans, meaning to encourage long-range planning as an alternative to haphazard, incremental development; and
- Conservation elements of a location, amount, and type to realize public benefits to which the public is not entitled under the Commission’s traditional zoning framework.

The facts and analyses presented below lead the Commission to conclude that the Concept Plan provides a reasonable and publicly beneficial amount, type and nature of long-term conservation of resources, including lake resources.

(i) *The Concept Plan Provides the Requisite Amount of Conservation To Accomplish the Comprehensive Planning Objective of Concept Plans*

The CLUP states that, “The goal of concept planning is to encourage long-range planning based on resource characteristics and suitability as an alternative to haphazard, incremental development... To accomplish the comprehensive planning objective of concept plans, the width of zones should generally be designed to encompass all lake-related development

planned for the area over the life of the concept plan, or 500 feet, whichever is more.”⁴⁴⁹

The Concept Plan includes all land in Plum Creek’s ownership that is located within 500 feet of the lakes and ponds within the affected area. This includes (i) the shores of all lakes and ponds within the Plan Area, (ii) the shores of all lakes and ponds within the Roaches Ponds Tract, and (iii) the shores of lakes and ponds that fall partly within and partly outside of the Plan Area, which in some instances fall outside of the Commission’s jurisdiction (e.g., the shores of Long Pond in the Town of Jackman and the shores of Rum Pond in the Town of Greenville). In fact, the Concept Plan includes land well beyond the minimum 500-foot wide buffer around these lakes and ponds, including: (i) the backlands east of Moosehead Lake in Days Academy Grant and Spencer Bay Townships, (ii) the backlands surrounding First Roach Pond, (iii) the backlands abutting the southern border of in the Roaches Ponds Tract, (iv) the backlands west of Moosehead Lake abutting the southern border of the Seboomook public lands, (v) the backlands north of Long Pond and Brassua Lake, (vi) the backlands south of Long Pond, and (vii) the backlands southeast of Indian Pond.

The Concept Plan conserves the vast majority of these shores and backlands. Specifically, of the 76 lakes and ponds within the Plan Area and Roaches Ponds Tract, 70 are designated for conservation under the MRCE and RCE, and limited portions (approximately twenty miles) of six are targeted for development. Furthermore, approximately 363,164 acres of the 380,074 acres within the Plan Area (96 percent) are designated for conservation under the MRCE, and another 29,500 acres within the Roaches Ponds Tract are designated for conservation under the RCE. This amount of conservation is well beyond the scale of conservation provided by prior concept plans approved by the Commission.⁴⁵⁰ As set forth in paragraph 9.B.(4), the affected area encompasses more than ample acreage to allow the Concept Plan to become, in effect, a forward-looking, regional land use plan that is a positive alternative to haphazard, incremental development.

Therefore, the Commission finds that the Concept Plan provides a sufficient amount of shore and backland area to accomplish the comprehensive planning objective of concept plans.

⁴⁴⁹ CLUP, 1997, p. C6.

⁴⁵⁰ See, e.g., LURC: Zoning Petition ZP 659; LURC: Zoning Petition ZP 682; LURC: Zoning Petition ZP 693.

(ii) *The Concept Plan Provides The Amount, Location And Type of Conservation To Satisfy The Requisite Public Benefits*

In reaching its conclusion that the Concept Plan’s conservation elements provide sufficient public benefits to satisfy the “balance” criterion, the Commission paid close attention to the testimony and comments submitted throughout the proceeding. The Commission notes that the conservation elements evolved considerably throughout the proceeding, as Plum Creek and ultimately the Commission made numerous material amendments to the location, size and terms of MRCE.⁴⁵¹ This evolution in many cases can be directly attributed to the concerns raised by members of the public, which served as an indicator to the Commission that the public benefits afforded by the conservation elements of earlier versions of the Concept Plan were insufficient to satisfy this criterion.⁴⁵²

The public testimony and comments also served as a gauge of the resources, uses and rights within the affected area that the public valued most and were most concerned about losing. In essence, many of the public concerns on the record focus on the same resources, uses and rights that the Commission finds are likely to be significantly and adversely impacted by land use changes that would to occur in the absence of this Concept Plan – that is, if Plum Creek or a subsequent landowner utilizes existing laws and regulations to pursue alternative proposals permitted under the Commission’s current laws and regulations. As set forth in paragraph 9.C., above, such land use changes would largely stem from haphazard, incremental development permissible under the Commission’s current zoning framework and from the creation of lots exempt from subdivision review (so-called “two-in-five” development). This development would likely include a substantial amount of development along shores of lakes and ponds, in backland areas within the viewsheds of lakes and ponds, and in other areas of high recreational and scenic value. The location, nature and amount of such haphazard, incremental development would also result in substantial restrictions on public access and use of these publicly valued resources, including for outdoor recreational pursuits.

The Commission finds that the amount, location and type of conservation provided in the Concept Plan not only alleviates these threats, but ensures that the public forever benefits from both the permanent protection, on a landscape scale, of resources within the affected area and the legal

⁴⁵¹ See paragraph 7 for a summary of how the key conservation elements changed over time.

⁴⁵² For example, while the conservation elements of Plum Creek’s April 2005 Zoning Petition consisted of the minimum 500-footwide buffers around lakes and ponds within the Plan Area, members of the public commented that the Concept Plan must also provide for permanent landscape-scale backland conservation in order to provide adequate public benefits. (See, e.g., LURC: Staff and Consultants, Oct. 31, 2005, Summary of Issues Related to the Plum Creek Concept Plan Proposal for the Moosehead Lake Region Presented to the Land Use Regulation Commission at the August 2005 Scoping Sessions and in Follow-up Written Submittals.)

guarantee of public access to use and enjoy these resources – entitlements that could not be attained under the Commission’s current zoning framework. Specifically:

- With respect to the amount and location of conservation, the Commission finds that these public benefits can only be realized if the conservation includes the permanent protection of a substantial amount of (i) the shores of remote and undeveloped ponds, remote portions of developed lakes and ponds, and undeveloped segments of high-value river corridors within the Plan Area, and (ii) those backland portions of the Plan Area that are threatened by haphazard, incremental development. These at-risk backland areas include places where the market pressures to develop are high – i.e., hillsides with views of lakes, ponds or river corridors, and other areas of high recreational or scenic value. In considering the location and size of the MRCE, the Commission finds that the lands protected by the MRCE encompass virtually all of these shores and at-risk backland areas within Plum Creek’s ownership.
- With respect to the type of conservation, the Commission finds that these public benefits can only be realized if conservation terms ensure the long-term protection of the shores and at-risk backland areas from the threats of land use change, and provide the public with guaranteed legal access to these areas. In considering the provisions of the Concept Plan, the Commission finds that the terms of the MRCE (i) protect these areas and the specific natural resources they contain (including a vast forested landscape, significant scenic and recreational resources, and significant wildlife and ecological resources) by permanently prohibiting residential development, significantly limiting non-residential development, and conducting forestry in a manner that protects these natural resources, and, (ii) in combination with the three recreational trail systems (ITS snowmobile, hiking, and Mahoosucs-to-Moosehead) and the vehicular road easements traversing the Plan Area, provide perpetual guaranteed public access to the shores and at-risk backlands for outdoor recreational pursuits.

As such, the Commission finds that the Concept Plan provides the amount, location and type of conservation to realize the requisite public benefits described above.⁴⁵³

⁴⁵³ The Commission notes that, with respect to the amount, location and type of conservation necessary to realize public benefits, certain previous versions of Plum Creek’s petition did not contain sufficient conservation elements to satisfy the “balance” criterion, even when considered in isolation of the additional governing review criteria. For example:

(c) Conclusions

Based on its analysis of the facts in the record, the Commission concludes that the Concept Plan strikes a reasonable and publicly beneficial balance between appropriate development and long-term conservation of lake resources. In fact, the Commission finds that the Concept Plan includes conservation elements of a location, amount and type that exceed the minimum regulatory requirements to satisfy the “balance” criterion. (However, some of these conservation elements are necessary to satisfy other governing review criteria. See paragraph 9.E. for the Commission’s determination regarding the conservation elements necessary to mitigate impacts to existing uses and resources, including wildlife resources and scenic and recreational resources and uses. See paragraph 9.F.(3) immediately below for the Commission’s determination regarding the conservation elements necessary to satisfy the “comparable conservation” criterion.)

(3) **The Concept Plan Development Gained Through A Waiver Of The Commission’s Adjacency Criterion Is Matched By Comparable Conservation Measures (Ch. 10.23,H,6,d Of The Commission’s Rules)**

In order to approve a concept plan and the associated change in zoning, the Commission must find that “[t]he plan, taken as a whole, is at least as protective of the natural environment as the subdistricts which it replaces. In the case of concept plans, this means that any development gained through any waiver of the adjacency criterion is matched by comparable conservation measure[s].”⁴⁵⁴

In reaching its determination as to whether the Concept Plan satisfies the “comparable conservation” criterion, the Commission is guided in particular by the CLUP descriptions of the adjacency criterion.⁴⁵⁵ These descriptions are set forth in paragraph 9.B.(4), above. The Commission notes that, as a general matter, waivers of adjacency in concept plans are fitting because they come in tandem with, and are dependent upon, affirmative conclusions that must be reached by the Commission with respect to a concept plan’s

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- The April 2005 Zoning Petition, whose conservation elements consisted of approximately 11,000 acres of shorefront conservation that was to be executed incrementally upon subsequent subdivision approvals, did not include all shoreland or any at-risk backland portions of the Plan Area and did not contain conservation terms that sufficiently protected the shores and at-risk backland areas or guaranteed public access to these areas.
 - While the April 2006 Zoning Petition enhanced the conservation elements by including approximately 61,000 acres of backland conservation within the northeast portion of the Plan Area and enhancing public access rights, it did not configure the 61,000 backland conservation acres to encompass all at-risk backland areas. The Commission did not evaluate whether 61,000 acres would have been sufficient to realize the requisite public benefits.
 - The April 2007 Zoning Petition further enhanced the conservation elements by expanding the shorefront and backland conservation to approximately 90,000 acres and by reconfiguring those acres to envelop proposed development areas such that they encompassed all shores and heights of land within the viewsheds of those lakes proposed for development, thereby providing a sufficient amount and location of conservation to realize the requisite public benefits. However, the easement as proposed included innumerable provisions that the Commission found did not sufficiently protect public rights and values.

⁴⁵⁴ Ch. 10.23,H,6,d of the Commission’s rules.

⁴⁵⁵ CLUP, 1997, pp. 122, 141.

consistency with the CLUP, including (i) findings that development is consistent with the goals and policies pertaining to the location of development and is otherwise “appropriate,” and (ii) because a concept plan must ultimately be an *alternative* to haphazard, incremental growth (which the CLUP recognizes is propagated in part by the weaknesses of the adjacency criterion).⁴⁵⁶ Below, the Commission sets forth its findings with respect to whether the conservation elements of the Concept Plan are sufficient to prevent harm from the development allowed through waivers of adjacency – that is, development in locations and of a scale and intensity that would otherwise not be permitted.

(a) The Concept Plan Requires A Substantial Waiver Of Adjacency

In general, the CLUP interprets the adjacency criterion to mean that development should be located no more than one mile by road from existing development of similar type, use, occupancy, scale and intensity to that being proposed.⁴⁵⁷

According to Commission staff analysis⁴⁵⁸ of development in the Concept Plan as it was proposed by Plum Creek in its October 2007 Rezoning Petition, approximately 335 of the 975 residential dwelling units that were proposed to be located outside of resort development areas appeared to meet the adjacency criterion, in terms of both distance from and character of nearby development. Approximately 640 of the proposed units did not. However, 180 of these were located within the shoreland areas of Management Class 3 lakes.⁴⁵⁹ Of the 1,050 units proposed within the Big Moose Mountain and Lily Bay development areas, an estimated 100 units appeared to meet the adjacency criterion and 950 did not. The staff did not specifically evaluate additional modest levels of development that is likely to occur within certain development areas to accommodate

⁴⁵⁶ The Commission notes that in this Concept Plan, both the “balance” and “comparable conservation” criteria trigger requirements for conservation of an amount, location and type that address the impacts of haphazard, incremental development. However, these criteria serve two distinct purposes. The “balance” criterion requires that certain public benefits are granted above and beyond those that would otherwise be realized under the Commission’s current zoning framework. These public benefits must be provided irrespective of whether a waiver of adjacency is granted. In contrast, the “comparable conservation” criterion is only required for concept plans where waivers of the adjacency criterion are requested. This criterion assures that any potential harm deriving from such waivers in fact will not occur.

⁴⁵⁷ CLUP, 1997, pp. 122, 141; *see also* paragraph 9.B.(6) for a summary of the Commission’s adjacency criterion.

⁴⁵⁸ *See* LURC: Nov. 5, 2007, A Comparison of Development Elements of Plum Creek’s Moosehead Lake Region Concept Plan Proposal to the Commission’s Adjacency Principle. The Commission provided the parties an opportunity to comment on staff’s adjacency analysis. Comments were filed arguing both that the analysis was too permissive on the one hand, and that it constituted an unjustifiable restriction, on the other. (*See, e.g.*, MA-NRCM: Nov. 20, 2007 filing, pp. 2-3; MSCC: Nov. 20, 2007 filing.) The Commission considered the comments but concludes that the staff analysis is a reasonable and appropriate interpretation and application of the adjacency criterion.

⁴⁵⁹ The Commission waives the adjacency criterion for development proposals on the shores of Management Class 3 waters if the lake or pond does not have existing or potential water quality problems and soils are suitable for development. (CLUP, 1997, p. C7) The record evidence shows that neither Brassua Lake nor Long Pond have existing or potential water quality problems (*see* DEP, Aug. 31, 2007 filing, p. 4) and that sufficient soils exist within the development areas nearby these lakes to accommodate the contemplated development (*see* AGRI, Aug. 31, 2007 filing; Tr. Dec. 13, 2007, p. 94; *see also* paragraph 9.E.(4)(f) for the Commission’s findings and conclusions regarding soils suitability).

affordable housing, employee housing, and caretaker/manager housing. Given that these types of dwelling units are permitted in many of the development areas, it is likely that a percentage of such units will also not meet the adjacency criterion.

Since the Commission staff's November 2007 analysis, several changes to the Concept Plan change the staff analysis somewhat, including elimination of the development area on the north side of Long Pond, the shrinking of the development area at Lily Bay, and the explicit restriction of development on Indian Pond to only uses allowed in a Primitive Resort Development (D-MH-PR) zone. However, the Commission finds that in the amended Concept Plan the number and distribution of adjacent and non-adjacent units are of the same order of magnitude: approximately 1,500 of the 2,025 units require a waiver of adjacency due to their locations in relation to nearby development, their character in relation to nearby development, or both.

(b) Absent Conservation, The Secondary Effects Of Development Requiring A Waiver Of Adjacency Would Likely Harm The Natural And Cultural Resources Of The Affected Area

While the Concept Plan development that requires a waiver of adjacency is of a location, scale and type that is appropriate⁴⁶⁰ and thus will not unduly adversely affect the resources within and surrounding the Plan Area, the Commission finds that, absent conservation limitations imposed by the Commission, the secondary development pressures that this allowed development would generate would likely trigger future haphazard, incremental development in adjoining areas, which would harm existing natural and cultural resources.

Although no specific numerical record evidence exists regarding the likely scale of secondary development that may follow from this waiver of adjacency, the record shows that, absent the Concept Plan, development pressures in the region will likely continue to occur in the affected area in a haphazard and unplanned way, as is permissible under both the Commission's current zoning framework and through lot creation exempt from subdivision review (so-called "two-in-five" development).⁴⁶¹ This development would likely come in the form of (i) kingdom lot development, (ii) shorefront development, (iii) backland development within the viewshed of lakes, ponds and rivers, and (iv) development within other areas with significant scenic and recreational value.⁴⁶² Given that the number of units requiring a waiver of adjacency are a significant and dominant portion of the development contemplated in the Concept Plan, and that the Concept Plan has the

⁴⁶⁰ See paragraph 9.F.(2)(a) detailing the Commission's findings with respect to the appropriateness of development.

⁴⁶¹ See paragraph 9.C.(2) and (3) for information regarding the anticipated future and pattern of development absent the Concept Plan, and its likely resource impacts.

⁴⁶² CLUP, 1997, p. 124. See also OSI: Bley, Nov. 20, 2007 filing, Baseline Development Scenario for the Plum Creek Moosehead Project Lands, Discussion Paper No.1.

potential to accelerate the rate of development beyond historic development rates,⁴⁶³ it is reasonable to assume that the Concept Plan development requiring a waiver of adjacency would substantially contribute to these secondary development pressures in the absence of adequate conservation measures. The likely resource impacts of such secondary development pressures, set forth in paragraph 9.C.(3), would include harm to the long-term protection and management of the existing forest resources, wildlife and plant resources, and recreational and scenic resources.

(c) The Concept Plan Provides Sufficient Conservation To Prevent Harm From The Secondary Effects Of Development Requiring A Waiver Of Adjacency

In evaluating the Concept Plan in light of the “comparable conservation” criterion, the Commission examined whether the Concept Plan’s conservation elements – including the amount, location and protective terms – effectively prevent the impacts from secondary development that would otherwise likely occur subsequent to the development of approximately 1,500 units requiring a waiver of adjacency. The following facts and analysis lead the Commission to conclude that the Concept Plan does indeed provide the conservation necessary to prevent harm from these secondary development pressures:⁴⁶⁴

(i) *The Conservation Elements Permanently Prohibit Residential Development In All Areas Likely To Face Secondary Development Pressures*

The Commission finds that conservation elements of the Concept Plan, specifically the MRCE and RCE, permanently prohibit residential development on all shores and backlands within the Plan Area that would likely face substantial market pressures for development as a result of the Concept Plan development requiring a waiver of adjacency, including kingdom lot development. The areas most likely to face such development pressures are:

- All of the shores of remote and undeveloped ponds, remote portions of developed lakes and ponds, and undeveloped segments

⁴⁶³ See paragraph 9.B.(5).

⁴⁶⁴ The Commission notes that, with respect to the amount, location and type of conservation, certain previous versions of Plum Creek’s petition did not contain sufficient conservation elements to satisfy the “comparable conservation” criterion. For example:

- The April 2006 Zoning Petition (which included approximately 11,000 acres of shore conservation and approximately 61,000 acres of backland conservation within the northeast portion of the Plan Area) did not configure these conservation acres to encompass areas likely to face secondary development pressures.
- While the April 2007 Zoning Petition (which included a reconfigured 90,000 acres of shorefront and backland conservation that enveloped proposed development areas and encompassed all areas at risk from secondary development pressures within the Plan Area) was sized and configured to protect the Plan Area from secondary development pressures and “leapfrogging” effects, it did not include such protections for the Roaches Ponds Tract, which likely would have faced significant development pressures from the Concept Plan development, particularly from development within the Lily Bay development area.

of high-value river corridors within the Plan Area and within the Roaches Ponds Tract;

- All hillsides with views of lakes, ponds or river corridors within the Plan Area and the Roaches Ponds Tract; and
- Other areas of high recreational or scenic value, including areas especially valued for primitive recreation in a remote setting (e.g., the ponds and backlands of the Roaches Ponds Tract, the backlands of Spencer Bay and Days Academy Grant area, the Number 4 and Baker Mountain area, and the Hedgehog Pond area in the southeast portion of the Plan Area) and areas especially valued for primitive recreation in a largely undeveloped, yet accessible setting (e.g., the shores of the Moose River, the shores of the East and West Outlets of the Kennebec River, and the shores and viewshed of Prong Pond).

In considering the size and location of the Concept Plan conservation elements, the Commission finds that the MRCE and RCE are sized and configured to encompass all of the areas identified above that are likely to face secondary development pressures stemming from development requiring a waiver of adjacency. Further, these conservation easements are configured in a manner that surrounds the development areas requiring a waiver of adjacency, thereby protecting nearby areas from the long-term “leapfrogging” effects of the adjacency criterion.

(ii) *The Conservation Elements Permanently Restrict Non-Residential Development In All Areas Likely To Face Secondary Development Pressures*

The terms of the MRCE and RCE also permanently restrict the location, scale and type of non-residential development within the Plan Area and the Roaches Pond Tract, and ensure that each holder of these easements has oversight of these restricted non-residential structures and uses, which might otherwise proliferate in order to serve the development requiring a waiver of adjacency. For example:

- *Recreational Structures And Uses:*

The terms of the MRCE allow the construction and operation of low-intensity campgrounds, public boat launches, up to five back country huts and up to 25 remote rental cabins. The MRCE ensures that these recreational facilities may only be operated by BPL or a non-profit entity and must be open to the public on a non-exclusive basis.⁴⁶⁵ The terms of the RCE allow certain structures that promote primitive recreation, which must be open to the

⁴⁶⁵ See Concept Plan, Sep. 23, 2009, Appendix C, Sec. 3.C.6.

public on a non-exclusive basis. These include the construction and operation of up to three commercial sporting camps, ten remote rental cabins, three back country huts, and primitive campgrounds.⁴⁶⁶

- *Construction Materials Removal:*

While the terms of the MRCE allow the removal of construction materials (such as rock, gravel, aggregate and sand) to serve the needs of nearby communities, including the Concept Plan development, the MRCE also establishes requirements that (i) the disturbed area for construction materials removal does not exceed fifteen acres in size per extraction site, (ii) no more than 400 acres within the protected property be actively disturbed at any one time, and (iii) the Grantor must consult with the holder to reasonably minimize adverse effects to the Conservation Values.⁴⁶⁷

The RCE limits the removal of construction materials to the creation and operation of gravel and stone extraction pits of less than five acres in size, provided that (i) the disturbed area does not exceed two acres in size per extraction site, (ii) no more than 50 acres in the aggregate is exposed for excavation at any one time, and (iii) the extracted materials are only used for permitted uses on the protected property.⁴⁶⁸

- *Mining Activities:*

Both the MRCE and RCE permanently prohibit all mining activities on the protected property.

- *Septic Field Activities:*

The terms of the MRCE limit all activities related to the disposal (through spreading on the land) of septic tank waste to no more than 100 acres of the protected property at any given time, with no more than 500 acres in the aggregate permitted for the perpetual life of the conservation easement. The MRCE further requires holder approval of each such disposal site to ensure that these activities do not cause any undue adverse effects on the Conservation Values.⁴⁶⁹

⁴⁶⁶ See Concept Plan, Sep. 23, 2009, Appendix H, Sec. VI.A.1 and VI.B.1.

⁴⁶⁷ See Concept Plan, Sep. 23, 2009, Appendix C, Sec. 3.C.1.

⁴⁶⁸ See Concept Plan, Sep. 23, 2009, Appendix H, Sec. VI.C.

⁴⁶⁹ See Concept Plan, Sep. 23, 2009, Appendix C, Sec. 3.C.3.

- *Water Extraction:*

The MRCE limits water extraction activities on the protected property to those serving forestry or residential purposes located within the surrounding communities, and to those serving the resort developments within the Plan Area. The MRCE explicitly prohibits water extraction for consumer retail or “bottled water industry” purposes. The MRCE also requires the Grantor to consult with the holder prior to conducting any water extraction activities in order to reasonably minimize adverse effects to the Conservation Values.⁴⁷⁰ The RCE allows only water extraction to be used in connection with permitted uses on the protected property.⁴⁷¹

- *Wind Power Development:*

The MRCE limits the location of wind power turbines to several ridgelines in the southwest portion of the Plan Area. The MRCE also requires holder approval of such activities, but the MRCE is deferential to the new State law establishing expedited wind power permitting areas (which includes a significant portion of the Plan Area) by stating that such holder approval is deemed granted unless the holder makes an affirmative finding that the regulations used in making those permitting decisions are insufficient to avoid an undue adverse effect on the Conservation Values.⁴⁷² The RCE prohibits large-scale wind power development and only allows electric power generation from renewable sources to be used on the protected property in connection with uses permitted by the RCE.⁴⁷³

(d) Conclusions

Based on its analysis of the facts on the record, the Commission finds that the conservation elements of the Concept Plan are sufficient to prevent harm from the development requiring a waiver of adjacency. Therefore, the Commission concludes that the development gained through the Commission’s waiver of the adjacency criterion is matched by comparable conservation measures, thus making the Concept Plan at least as protective of the natural environment as the subdistricts which it replaces.

⁴⁷⁰ See Concept Plan, Sep. 23, 2009, Appendix C, Sec. 3.C.4.

⁴⁷¹ See Concept Plan, Sep. 23, 2009, Appendix H, Sec. VI.A.3.

⁴⁷² See Concept Plan, Sep. 23, 2009, Appendix c, Sec. 3.C.5.

⁴⁷³ See Concept Plan, Sep. 23, 2009, Appendix H, Sec. VI.A.2.

(4) **The Concept Plan Conservation Measures Apply In Perpetuity (Ch. 10.23,H,6,g Of The Commission’s Rules)**

To approve a concept plan, the Commission must find that “conservation measures apply in perpetuity, except where it is demonstrated by clear and convincing evidence that other alternative conservation measures fully provide for long-term protection or conservation.”⁴⁷⁴ In evaluating the Concept Plan in light of this requirement, the Commission considered, *inter alia*, the longevity of the Concept Plan’s conservation elements, the timing of execution of conservation elements, the provisions within the conservation easements related to holder and third party holder enforcement rights and amendment of conservation easement, and holder and third party holder qualifications.

The facts and analysis set forth below lead the Commission to conclude that the Concept Plan conservation measures apply in perpetuity and fully provide for long-term protection of resources and uses.

(a) **The MRCE and RCE Apply In Perpetuity As Of The Concept Plan Effective Date**

Although previous versions of Plum Creek’s proposal did not include conservation measures that fully provided for long-term protection or conservation,⁴⁷⁵ the Concept Plan now includes two conservation easements (the MRCE and RCE) that provide in-perpetuity conservation of nearly 400,000 acres of land within and nearby the Plan Area. The Concept Plan also includes assurances that the terms of the MRCE and RCE will apply to the respective protected properties as of the Concept Plan effective date, even if these conservation easements are not executed at that time.

(b) **The MRCE and RCE Are Enforceable and Appropriately Difficult To Amend**

The MRCE and RCE contain specific provisions to ensure that the holder and third party holder have the legal authority and means to effectively enforce the protective terms of these conservation easements. For example:

- The MRCE and RCE impose substantial limits on the total number of subdivisions of the protected properties in order to, *inter alia*, make the monitoring of performance of multiple landowners practicable for the holders.

⁴⁷⁴ Ch. 10.23,H,6,g of the Commission’s rules.

⁴⁷⁵ For example, the April 2005 Zoning Petition included approximately 11,000 acres of permanent conservation easements, which were proposed to be incrementally granted upon subsequent approvals of subdivision permit applications in the Plan Area, with no conservation proposed to be granted immediately upon Concept Plan approval. The April 2005 Zoning Petition also included proposed thirty-year zoning to restrict land uses on approximately 382,000 acres of backland area. The Commission finds that neither the incremental granting of conservation easements nor the restriction of land uses vis-à-vis zoning satisfies this criterion as they do not fully provide for long-term protection or conservation.

- The MRCE ensures that the third party holder has all the rights of the holder, and has access to all information in possession of the holder.
- The MRCE allows the third party holder to (i) either replace the holder if the third party holder finds that the existing holder is failing in material ways to perform its duties, or step into the shoes of the holder for a significant period of time as interim holder, in order to assess whether replacement of the holder is required, and (ii) independently undertake an enforcement action, with or without the approval of the holder.
- The MRCE includes substantial annual reporting requirements to the third party holder by the holder including reporting on monitoring undertaken during the year, any easement violations found and actions taken as a result, and potential violations or emerging issues identified by the holder or brought to the attention of holder by any other entity.
- The MRCE requires the third party holder to conduct an independent audit of the performance of the holder every three years, and publicly release the results of this audit.
- The Attorney General can independently enforce the terms of the MRCE and RCE.

The Commission also amended the terms of the MRCE to eliminate the degree of latitude set forth in previous versions of conservation easements proposed by Plum Creek with respect to amending the terms of the conservation easement, thereby substantially limiting amendments to only those which do not change the protections afforded by the MRCE, and only in a very narrow set of circumstances.

Further, the Concept Plan requires the execution of specified agreements which set forth the financial, fiduciary and administrative terms and conditions that govern the creation, endowment and administration of stewardship funds for the MRCE and RCE. These agreements ensure that funding for monitoring and enforcement of the MRCE and RCE terms are sufficient and readily available to the holder and third party holder. The MRCE-related agreement also ensures that certain provisions and funding are part of the stewardship fund so that the third party holder can meaningfully fulfill its various enforcement and monitoring responsibilities, including the provision of monies from the fund for the third party holder's every-three-year audit.

Based on this, the Commission finds that the MRCE and RCE are fully enforceable, thereby providing the necessary assurances that the protections afforded by these conservation easements are, indeed, perpetual.

(c) The Holders Are Qualified To Hold The MRCE And RCE

In considering whether the entity proposed by Plum Creek as holder and third party holder of the MRCE was qualified, and in further considering which entity is appropriate as the holder for the RCE, the Commission considered testimony and comments filed by parties and governmental review agencies (including Plum Creek, BPL, FSM, MA-NRCM, MDIFW, MNAP, MRFC, NFN and TNC), and evaluated the qualifications of both FSM and BPL against its *Guidelines for the Selection of Conservation Easement holders*.⁴⁷⁶ As part of its consideration of the appropriateness of FSM as the MRCE holder, the Commission also specifically sought and considered public comment regarding (i) whether FSM is more appropriate than BPL to be the holder and (ii) if so, what specific additional provisions should be imposed that would assure that public rights and protections provided in the MRCE are monitored and enforced on an ongoing basis by the holder, and what remedies should be put in place if the third party holder finds that such monitoring and enforcement is not occurring. The Commission's request for comment on this matter elicited detailed and conflicting statements from a number of parties on who should be the MRCE holder.

In reviewing the record evidence, the Commission finds that FSM operates for public conservation purposes and has the commitment and, in light of the protective legal terms contained in the MRCE, the capability to monitor and enforce the MRCE. This conclusion is reached based on a combination of three factors: (i) the Commission's conclusion that FSM satisfies the Commission's conservation easement holder guidelines, (ii) BPL's refusal to be the holder, and (iii) the addition and enhancement of terms in the MRCE which ensure that the public rights and protections granted through the conservation easement are effectively enforced.

The Commission further finds that BPL is qualified to be the holder of the RCE and third party holder of the MRCE, based on the fact that BPL is a public agency charged by law to protect and manage a public interest and that no parties provided evidence or objections to the contrary.

(d) Conclusions

Based on its analysis of the facts on the record, the Commission finds that the Concept Plan's conservation measures apply in perpetuity.

⁴⁷⁶ LURC: Nov. 10, 2004, Guidelines for Selection of Conservation Easement Holders.

(5) **The Concept Plan Addresses Specific Relevant Conservation-Related Issues Raised On The Record**

As stated above, many parties, governmental review agencies and members of the public filed testimony and comments regarding the sufficiency of the specific terms of the conservation easements. Below, the Commission sets forth the facts and analysis regarding several of these specific issues raised on the record. However, in reaching its conclusions regarding the sufficiency of the Concept Plan’s conservation elements in light of governing review criteria, the Commission carefully considered all of the evidence presented on the record.⁴⁷⁷ Further information on these and other specific conservation-related issues, including Commission staff and consultants’ analyses and recommendations on many of these issues, are contained in the administrative record.

(a) **Allowing Wind Development As A Permitted Use In The MRCE Does Not Change The Commission’s Conclusions Regarding The Concept Plan’s Consistency With The Standards For District Boundaries**

In evaluating the issues presented with respect to wind development, the Commission draws upon the following statutory and regulatory materials:

- The Commission’s specific goals and policies pertaining to energy resources, including the goal to provide for the environmentally sound and socially beneficial utilization of indigenous energy resources where there are not overriding, conflicting public values which require protection.⁴⁷⁸
- Emergency legislation adopted by the Legislature and signed by the Governor in 2008 (Public Law, Ch. 661), which specifically provides that for wind energy development located within designated “expedited” wind power permitting areas,⁴⁷⁹ “the commission shall consider the development’s effects on scenic character and existing uses related to scenic character in accordance with Title 35-A, section 3452.”
- 35-A M.R.S.A., § 3452, which sets the criteria for approval and establishes visual impact assessment requirements for wind development projects.

⁴⁷⁷ See, e.g., LURC: Staff and Consultants, Sep. 16, 2008, Notebook 2; see also LURC: Staff and Consultants, May 26, 2009, Memorandum to Commission: Summary of staff/consultant recommended revisions to March 2, 2009 draft Concept Plan.

⁴⁷⁸ CLUP, 1997, p. 139.

⁴⁷⁹ The southwest quadrangle of the Plan Area has been designated by the Legislature as such an “expedited” area, meaning that wind development would not otherwise require Commission rezoning to a D-PD Subdistrict and would instead be subject to the scenic impact criteria and evaluation requirements set forth in 35-A M.R.S.A. § 3452.

The Concept Plan identifies wind development – i.e., the siting of wind power turbines and associated roads and utility infrastructure – as a permitted use, subject to certain restrictions and limitations, on three ridge formations within the southwest quadrangle of the Plan Area generally known as the Misery Ridge area, all on lands covered by the MRCE.

Nine parties (COALITION, FPL, MA-NRCM, MRFC, MSCC, PCEDC, SEDC, WMF and Plum Creek) presented testimony and comments regarding whether such wind development is an appropriate permitted use within portions of lands covered by the MRCE.⁴⁸⁰ All of these parties generally acknowledged the public benefits that wind development can provide, and most parties stated that prematurely closing off the opportunity to undertake wind development would not be in the public’s interest and would be inconsistent with the Legislature’s intent in promulgating expedited wind development permitting reviews within certain parts of the State of Maine.⁴⁸¹ Two parties (MA-NRCM and MRFC), however, raised concerns with respect to wind development’s potential adverse impacts on scenic and recreational resources within and surrounding the Plan Area, concluding that such development would likely lead to adverse impacts to some of the scenic and recreational resources in the area.⁴⁸²

In considering whether wind development should be a permitted use within the MRCE, the Commission finds the two questions presented by MA-NRCM in its comments especially helpful. MA-NRCM suggested that the Commission consider:

1. Whether the proposed activity is appropriate in areas intended to provide conservation mitigation and balance for resort and residential development; and
2. If so, what additional conservation is required to mitigate and balance the adverse impacts of commercial wind development?⁴⁸³

⁴⁸⁰ See, e.g., Dec. 8, 2008 filings by these parties.

⁴⁸¹ E.g., “...it would be contrary to Maine’s best interest to close off the opportunity to undertake wind development siting ... Also, it is the Coalition’s understanding that areas in question proposed for potential wind power development siting are located within the ‘expedited permitting areas’ as established by the Governor’s Task Force on Wind Power Development. Therefore it was the Legislature’s intention to signal that these areas should receive serious and thorough consideration for wind power development. Such consideration may only take place if these areas are not barred from the opportunity of possibly hosting wind facilities.” (COALITION: Dec. 8, 2008 filing.) “Whether an application for wind power development gets approved or under what conditions it gets approved should be the subject of the specific proceeding that takes place in the processing of the particular application.” (FPL: Dec. 8, 2008 filing.) “...good planning practice at this scale requires that opportunities not be prematurely rejected. It cannot be determined at the Concept Planning level that the potential siting of wind power would have an adverse impact on the benefits offered by the Plan as a whole.” (MSCC: Dec. 8, 2008 filing.)

⁴⁸² Specifically, MRFC stated that it “cannot support industrial wind power development within any lands that are designated as conservation balance for resort and residential development elsewhere within the Concept Plan area” (MRFC: Dec. 8, 2008 filing) and MA-NRCM concluded “there would likely be adverse impacts to some of the scenic and recreational resources” in the area and that “LURC must assure that the conservation easement’s dual role of allowing the continuation of industrial forestry while limiting development is not compromised” by permitting wind development in portions of the Plan Area (MA-NRCM: Dec. 8, 2008 filing).

⁴⁸³ MA-NRCM: Dec. 8, 2008 filing.

The Commission agrees with MA-NRCM that these are timely and relevant questions because “[w]hile any wind project proposed will have to go through the expedited permit review process, the above two questions will not be relevant at that time.”⁴⁸⁴

Based on its review of the record evidence, the Commission finds that the potential amount of MRCE land that may be utilized for wind turbines and the associated infrastructure, as limited by the terms of the MRCE, is an insignificant and small percentage the total easement, and further finds that there are no known special natural resource values in these areas that could not be protected as part of a wind power development. Therefore, the Commission finds that in this case wind development is an appropriate permitted use within a limited portion of the area serving as conservation mitigation and balance for residential and resort development, and therefore does not change its conclusions that the amount and location of land protected by the MRCE and RCE is sufficient to satisfy the “balance” and “comparable conservation” review criteria.

Further, while the Commission concurs with MA-NRCM that any wind project is likely to have some adverse impacts to certain scenic and recreational resources in the area, the Commission finds that the criteria contained in 35-A M.R.S.A. § 3452 will ensure that such impacts are evaluated as part of future development permit reviews and will further ensure that such impacts are not unduly adverse. As such, the Commission amended the terms of the MRCE to allow wind development subject to the receipt of all necessary permits pursuant to applicable laws and regulations. Specifically, the MRCE states:

Subject to the receipt of (1) all necessary permits pursuant to applicable laws and regulations, and (2) Holder approval, Grantor shall have the right to undertake Wind Power Turbine Activities in the Wind Power Facility Area and Wind Power Associated Activities in all other locations on the Protected Property (“proposed activity”). If all necessary permits have been received for the proposed activity, Holder approval is deemed granted, unless the Holder makes an affirmative finding that the regulatory standards used in making the permitting decision(s) regarding the proposed activity were inadequate to determine whether the proposed activity would cause an undue adverse effect on the Conservation Values. Holder and Third Party acknowledge that the regulatory standards in effect on the date of execution of this Conservation Easement are adequate to make said determination of undue adverse effect on the Conservation Values.⁴⁸⁵

⁴⁸⁴ MA-NRCM: Dec. 8, 2008 filing.

⁴⁸⁵ See Concept Plan, Sep. 23, 2009, Appendix C, Sec. 3.C.5.

While this MRCE language is deferential to the new law, it prevents possible future changes to the law from undermining its current regulatory rigor, leading the Commission to find that any potential adverse impacts to recreational and scenic resources from wind development located within the designated ridge formations will never be unduly adverse. Therefore, the Commission finds that no additional conservation is required to mitigate the potential impacts of commercial wind development in this limited portion of the MRCE.

Based on the facts and analysis presented above, the Commission concludes that the conservation benefits and protections afforded by the MRCE satisfy regulatory requirements even with wind development as a permitted use within a limited portion of the conservation easement area.

(b) Under the Governing Statutory and Regulatory Standards, Whether Plum Creek Receives Some Form of Private Compensation for the MRCE or RCE is Immaterial

Five parties (FEN-RESTORE, MA-NRCM, MWGO, MRFC and NFN) argued that Plum Creek should not be allowed to include the Moosehead Legacy Conservation Easement – which is now a 266,000 acre portion of the MRCE – and the Roaches Ponds Tract as part of the conservation required in return for the development rights granted in the Concept Plan. FEN-RESTORE and MA-NRCM in particular devoted substantial comments to this issue. The objecting parties argue generally that, *e.g.*, because Plum Creek has arranged to receive private compensation for this conservation land, it is or should be *per se* barred from using the land to satisfy regulatory requirements.⁴⁸⁶

The Commission appreciates that the policy issues that these parties raise in their comments are significant, and that reasonable people may differ on the appropriate public policy that should be adopted to resolve these issues. However, the Commission concludes as a matter of existing law that whether Plum Creek receives financial compensation from private parties for the MRCE or RCE is immaterial under the statutory and regulatory requirements governing this decision. As set forth above, the Commission has found that the location, scale and terms of MRCE and RCE are legally required for approval of this Concept Plan and associated P-RP Subdistrict, and as part of this requirement has determined that execution of these two conservation easements is mandated prior to any development occurring. As such, Plum Creek's obligations to cause these

⁴⁸⁶ The comments also include warnings about the precedent that would be set unless the Commission rules that conservation land cannot be used to satisfy regulatory requirements if the landowner is compensated for it. The suggestion is that developers will somehow exploit conservation buyers by making the terms of a conservation sale contingent on regulatory approval for a development proposal, and by implication that TNC was exploited here. However, the Commission is aware that conservation buyers have control over the terms of purchase and sale, and cannot be forced to agree to such contingencies. To the extent that the Commission's approach to the unique transaction between Plum Creek, TNC and AMC sets any "precedent" influencing future land conservation deals, the precedent may be to encourage conservation buyers to await the outcome of regulatory proceedings that will require, through regulation, significant land conservation from the landowner if significant development is approved, rather than first agreeing to the terms of a transaction that is expressly contingent on that regulatory approval.

conservation easements to take effect before any permit applications are approved are entirely unaffected if payment to Plum Creek does not occur.

For this reason, the Commission is neither “proposing,” as some parties suggested in their comments, nor in any way encouraging or endorsing the terms of the private financial transactions associated with the MRCE and RCE. Instead the Commission’s only concern is whether the conservation land Plum Creek is delivering is quantitatively and qualitatively sufficient to satisfy governing review criteria. The Commission takes no position on the existence, nature or extent of any compensation Plum Creek may receive, other than noting that it is not the Commission, the State of Maine, or any other governmental entity that has chosen to pay Plum Creek for conservation land that the Commission has determined to be regulatorily required for approval of the Concept Plan, but instead private parties. The existence and terms of such private transactions are beyond the Commission’s jurisdiction as it is currently constituted where, as here, those terms do not undermine the substantive adequacy of the conservation land.⁴⁸⁷

Several commenters assert the existence of a legal prohibition on applicants receiving financial assistance from third parties to assist them in complying with the Commission’s required conservation actions. These assertions are accompanied by no citation to, or analysis of the statutory or regulatory language that might support this legal conclusion. The Commission finds that the concept of a “donation” presently appears nowhere in LURC’s statutes or regulations, and there is nothing intuitive about why the concepts of “mitigation,” “comparable conservation,” or “publicly beneficial balance” – the three regulatory standards found by the Commission to form the basis for the conservation easements – inherently depend on a donation. Rather, the Commission finds that the concern of the Commission as it applies its review criteria is not whether and how Plum Creek has privately arranged, with private parties, to deliver required conservation land, but only that adequate conservation land to meet regulatory requirements is in fact delivered to the public, thus leaving it to Plum Creek to decide how best to satisfy those standards.

Under current law, the Commission simply does not have the legal authority to declare that a landowner does not, *per se*, meet these regulatory standards if, as a way to meet them, the landowner is able to arrange financial assistance from a private third party.

⁴⁸⁷ The Commission notes that drafting a regulation addressing the policy issue raised in this paragraph would present challenges. Since compensation between private parties can take many forms other than the classic, cash-based purchase and sale agreement, and such terms will often not be transparent to the public, the Commission would not be well positioned to determine whether and to what extent such compensation may be occurring. Moreover, where some form of private compensation exists, the Commission would be ill-equipped to determine whether and to what extent it should discount the value of the conservation land for the purpose of satisfying regulatory requirements. Regardless, since these issues are nowhere addressed in current law and regulation, they are necessarily matters to be addressed, if at all, in future policymaking.

(6) **Conclusions**

In summary, based on a thorough review of the record evidence and analysis of the provisions of the Concept Plan, including the terms and conditions of the MRCE and RCE, the Commission concludes that there is substantial evidence that the Concept Plan and the associated P-RP Subdistrict is consistent with the standards for district boundaries in effect at this time, and fully satisfies the criteria for approval contained in Ch. 10.23,H of the Commission's rules.

G. The Concept Plan Is Consistent With The Review Standards For Structures Adjacent To Lakes (Ch. 10.25,A Of The Commission's Rules)

In applying the criteria for adoption or amendment of land use district boundaries pursuant to 12 M.R.S.A. § 685-A(8-A), the Commission considered the following review standards set forth in Ch. 10.25,A of its rules, which otherwise must be met for all subdivisions and commercial, industrial and other non-residential structures and uses proposed on land adjacent to lakes:

- Natural and cultural resource values: The proposal will not adversely affect natural and cultural resource values identified as significant or outstanding in the Wildlands Lakes Assessment;
- Water quality: The proposal will not, alone or in conjunction with other development, have an undue adverse impact on water quality;
- Traditional uses: The proposal will not have an undue adverse impact on traditional uses, including without limitation, non-intensive public recreation, sporting camp operations, timber harvesting, and agriculture;
- Regional diversity: The proposal will not substantially alter the diversity of lake-related uses afforded within the region in which the activity is proposed;
- Natural character: Adequate provision has been made to maintain the natural character of shoreland[s];
- Lake management goals: The proposal is consistent with the management intent of the affected lake's classification; and
- Landowner equity: Where future development on a lake may be limited for water quality or other reasons, proposed development on each landownership does not exceed its proportionate share of total allowable development.

Consistent with Ch. 10.25,A, the Commission considered, *inter alia*, the Wildlands Lakes Assessment findings and relevant provisions of the CLUP in applying these review standards. The Commission's analysis and conclusions with respect to each of these review standards is set forth below.

(1) **The Concept Plan Will Not Adversely Affect Significant Or Outstanding Natural And Cultural Resource Values**

The Commission finds that many of the lakes and ponds adjoining or encompassed by the Plan Area or the Roaches Ponds Tract include one or more fisheries, wildlife, scenic, shore character, botanic, cultural and physical resource values identified as significant or outstanding in the Wildlands Lakes Assessment. For example, the six lakes and ponds directly affected by the Concept Plan's development components are rated as follows:

Resource Value Ratings
 (S = Significant; O = Outstanding)

	Fisheries	Wildlife	Scenic	Shore Character	Botanic	Cultural	Physical
Brassua Lake	S					O	
Burnham Pond	S	S					
Indian Pond	S	O				S	
Long Pond	S	S	O	S		S	
Moosehead Lake	O	O	O ⁴⁸⁸	O ⁴⁸⁹	O	O	O
Upper Wilson Pond	O	S	O	S			S

The Commission considered the resource value ratings for these lakes and ponds, as well as other lakes and ponds affected by the Concept Plan, in reaching its conclusions that Concept Plan (i) is consistent with the CLUP, particularly the natural and cultural resources goals and policies set forth therein, and (ii) will cause no undue adverse impacts to existing uses and resources.

Consistent with its analysis and findings in paragraphs 9.B. and 9.E., above, wherein the Commission evaluated the Concept Plan’s impacts on existing natural and cultural resources within and surrounding the Plan Area – including the natural and cultural resources associated with lakes and ponds and their shores – the Commission finds that the significant and outstanding natural and cultural resource values, on individual lakes as well as in the aggregate, will not be adversely affected by the Concept Plan or the associated P-RP Subdistrict.

(2) **The Concept Plan Will Not Have An Undue Adverse Impact On Water Quality**

As set forth in paragraph 9.E., the Commission finds that the Concept Plan will not have an undue adverse impact on water quality. Specifically, the Commission finds that the Concept Plan puts in place, *inter alia*: (i) review standards and processes that require the presentation of specific water quality impact analyses (such as detailed phosphorus export evaluations of specific development proposals) at subsequent development and subdivision permit applications, (ii) minimum mandatory declaration elements that require independent, third-party reviews for ongoing compliance with standards relating to water quality, and (iii) the MRCE, whose terms set forth requirements for the vast majority of the Plan Area that all forest management activities be conducted in a manner that protects “the diverse and extensive bogs, wetlands, rivers, streams, lakes, remote ponds, and other aquatic habitats, including fisheries habitats, their water quality, undeveloped shorelines and riparian areas, and the ecological values of these areas.”⁴⁹⁰ In reaching this determination, the Commission considered the effect of the Concept Plan

⁴⁸⁸ The Wildlands Lakes Assessment divides Moosehead Lake into eight sections. While scenic resources are generally rated outstanding, one section is rated significant.

⁴⁸⁹ The Wildlands Lakes Assessment divides Moosehead Lake into eight sections. While shore character is rated significant in most of these sections, one section is rated outstanding and one is unrated.

⁴⁹⁰ Concept Plan, Sep. 23, 2009, Appendix C.

in isolation as well as in conjunction with other development that may occur on lakes and ponds affected by the Concept Plan.

(3) **The Concept Plan Will Not Have An Undue Adverse Impact On Traditional Uses And Will Not Substantially Alter The Diversity Of Lake-Related Uses Afforded Within The Region**

The Commission sets forth its analysis and conclusions with respect to the Concept Plan's impacts on recreational uses in paragraph 9.E. Impacts to forest resources, including impacts on fiber production, are more fully discussed at paragraph 9.C. As set forth in these paragraphs, the Commission finds that the Concept Plan has no undue adverse impact on traditional recreational and forestry uses and the existing diversity of lake-related uses, including the economic value of the jurisdiction for fiber production (particularly the tradition of a working forest) and diverse and abundant recreational opportunities (particularly for primitive pursuits). In reaching this determination, the Commission evaluated the effect of the Concept Plan on, *inter alia*, timber harvesting, commercial sporting camp operations and non-intensive public recreation, including the diversity of motorized and non-motorized lake-related recreational uses in the region.

(4) **The Concept Plan Maintains The Natural Character Of Shorelands**

In reaching its conclusions regarding the Concept Plan's effect on natural character,⁴⁹¹ the Commission evaluated the Concept Plan's effect on the natural character of the shorelands of lakes and ponds within and surrounding the Plan Area. The Commission finds that the Concept Plan permanently protects from development the vast majority of shores within the Plan Area and the Roaches Ponds Tract, pursuant to the terms of the MRCE and the RCE. For the approximately twenty miles of shoreland designated for development within the Plan Area (along the shores of Moosehead and Brassua Lake, and Long, Burnham, Indian and Upper Wilson Ponds), the Concept Plan includes specific provisions that impose vegetation clearing restrictions both along the shore and within the viewshed and establish limits on shoreland structures and water access sites. Therefore, the Commission concludes that adequate provision has been made to maintain the natural character of the shorelands affected by the Concept Plan.

(5) **The Concept Plan Is Consistent With The Management Intent Of Lake Classifications**

In evaluating the location, amount and type of development contemplated for the lakes and ponds within and surrounding the Plan Area, the Commission considered, *inter alia*, the management classifications of these waters, including the attendant management intent of their classifications as set forth in the CLUP.⁴⁹²

⁴⁹¹ The Commission's findings regarding the Concept Plan's effect on natural character is set forth in paragraph 9.B.

⁴⁹² CLUP, 1997, pp. C7 – C8.

The Concept Plan contemplates development on and nearby the shores of six water bodies – Moosehead Lake, Burnham Pond, Brassua Lake, Long Pond, Indian Pond and Upper Wilson Pond. The Commission’s findings with respect to these six water bodies are set forth below.

- *Moosehead Lake, Burnham Pond – Management Class 7:*

Management Class 7 water bodies consists of all lakes not otherwise classified, including many lakes which have multiple outstanding or significant resource values identified in the Wildlands Lakes Assessment. The management intent for these lakes is one of multiple use, including for resource conservation, recreation, and timber production, giving specific consideration to identified resource values when evaluating the merits of lake-related rezoning and permit applications.

As set forth above, the Commission specifically considered the significant and outstanding resource value ratings for Moosehead Lake and Burnham Pond in assessing whether development contemplated for these water bodies would adversely impact existing resources and uses. Based on these considerations, the Commission concludes that the location, amount and type of development contemplated for these two lakes is consistent with the multiple use management intent of Management Class 7 water bodies.

- *Brassua Lake, Long Pond, Indian Pond – Management Class 3:*

Management Class 3 water bodies are considered potentially suitable for development based on available information on water quality, access, conflicting uses, shoreland availability, water level fluctuation, location, regional considerations, and special planning needs. The management intent for these lakes is to support additional development around these water bodies, as long as such development is both responsible and the significant natural resource values of these water bodies are conserved.

The Commission finds that, while Management Class 3 water bodies are considered potentially suitable for development, this classification does not imply a pre-approval of development along the shores of these water bodies. In evaluating the location, amount and type of development contemplated for these three water bodies, the Commission specifically considered the Wildlands Lakes Assessment findings, as well as the record evidence with respect to the existing uses and resources on these water bodies. Based on this evaluation, the Commission finds of particular relevance that the Concept Plan (i) limits development to the southern “room” of Brassua Lake and excludes development that had been previously proposed by Plum Creek for the undeveloped “room” known as Little Brassua Lake; (ii) excludes development that had been previously proposed by Plum Creek along the northern shore of Long Pond; (iii) imposes limitations on the type and amount of development on the shore of Indian Pond; and (iv) permanently prohibits development and takes other measures to permanently protect, pursuant to the terms of the MRCE, the remaining shores of

all three water bodies within Plum Creek's ownership, and their resource values. In light of these and other provisions contained in the Concept Plan, the Commission finds that: (i) the development contemplated for these Management Class 3 lakes is responsible and (ii) the Concept Plan, through the terms of the MRCE, effectively and permanently conserves the significant natural resource values of these water bodies. Thus, the Commission concludes that the development contemplated for these three water bodies is consistent with the management intent of Management Class 3 water bodies.

- *Upper Wilson Pond – Management Class 4:*

Management Class 4 water bodies are high-value, developed lakes whose management intent is to allow a reasonable level of residential and recreational development while conserving natural resource values and maintaining undeveloped shoreland areas. The Commission will take special care in evaluating and regulating new subdivisions proposed on these lakes and will require cluster development to protect natural values except where clearly inappropriate due to site characteristics.

The Commission finds that the Concept Plan provisions regarding the location, type and amount of development contemplated for Upper Wilson Pond will allow for a limited amount of residential development while conserving natural resources and maintaining undeveloped shoreland areas. Specifically, the Concept Plan: (i) excludes development that had been previously proposed by Plum Creek for the east shore of Upper Wilson Pond, (ii) locates development along a confined portion of the west shore of Upper Wilson Pond that is adjacent to existing development; (iii) permanently restricts, through minimum mandatory declaration elements, the number of dwelling units within the Upper Wilson Pond development area to 32; (iv) limits shoreland structures and water access points to one common area along the shore; and (v) permanently maintains the remaining undeveloped shores of Upper Wilson Pond and protects its natural resource values pursuant to the terms of the MRCE. Thus, the Concept Plan in essence assures that development on Upper Wilson Pond is forever clustered and limited.

Based on these and other provisions in the Concept Plan, the Commission concludes that the development contemplated for Upper Wilson Pond is consistent with the management intent of Management Class 4 water bodies.

The Commission also evaluated the numerous lakes and ponds within and surrounding the Plan Area whose shores are not targeted for development. While most of these lakes and ponds are Management Class 7 water bodies with a range of significant or outstanding resource values, several are Management Class 1,⁴⁹³ Management Class 2⁴⁹⁴

⁴⁹³ Management Class 1 waters are high-value, least accessible, undeveloped lakes whose management intent is to preserve the best examples of these pristine lakes in their natural state by prohibiting development within ¼ mile of their shores and restricting permanent vehicular access to these lakes.

⁴⁹⁴ Management Class 2 waters are high-value, accessible, undeveloped lakes whose management intent is to conserve their special values by significantly restricting the density and intensity of development.

and Management Class 6⁴⁹⁵ water bodies. The shores of all of these lakes and ponds, and their natural resource values, will be permanently conserved pursuant to the terms of the MRCE and RCE. Consequently, the Commission finds that the Concept Plan is also consistent with the management intent of the respective classifications of these water bodies.

(6) **The Concept Plan Does Not Exceed Plum Creek's Proportionate Share Of Total Allowable Development**

The Commission finds that the Concept Plan attends to landowner equity in that it does not authorize development that exceeds Plum Creek's proportionate share of total allowable development for the following reasons:

First, none of the development contemplated in the Concept Plan exceeds either of the two general planning guidelines set forth in the CLUP, which were designed to preserve the natural character of lakes and prevent conflicts between incompatible uses.⁴⁹⁶ Specifically, shore development contemplated in the Concept Plan will not exceed an average of one dwelling unit per 400 feet of shore frontage within Plum Creek's ownership, and one dwelling unit per ten acres of lake surface area.⁴⁹⁷

Second, the provisions of the Concept Plan ensure that specific water quality information, including phosphorus export allocation assessments, must be presented with subsequent permit applications. Should the Commission find that future development on a water body is limited for water quality reasons, nothing in the Concept Plan precludes it from imposing measures as part of subsequent permit reviews to prevent landowner equity problems.

Third, the Commission finds that nothing in the Concept Plan precludes adjoining or nearby landowners from petitioning and obtaining zoning and permit approvals from the Commission for development in the Moosehead Lake region as long as such proposals satisfy governing review criteria.

(7) **Conclusions**

Based on the facts set forth above with respect to each of the review standards for structures adjacent to lakes, the Commission finds that it is feasible to undertake the development contemplated under the Concept Plan in a manner that complies with the review standards for structures adjacent to lakes. Therefore, the Commission concludes that the Concept Plan and the associated P-RP Subdistrict are consistent with the review standards set forth in Ch. 10.25,A of the Commission's rules.

⁴⁹⁵ Management Class 6 waters ("remote ponds") are inaccessible, undeveloped lakes whose management intent is to prohibit development within ½ mile of these waters to protect the primitive recreational experience and coldwater lake fisheries in remote settings.

⁴⁹⁶ CLUP, 1997, p. C4.

⁴⁹⁷ LURC: Nov. 19, 2004, Development Baseline Summary.

10. CONCLUSIONS

Based on the above Findings and the facts and supporting documents as represented in the administrative record of Zoning Petition ZP 707, the Commission reaches the following Conclusions:

- A. The Concept Plan and the associated P-RP Subdistrict are consistent with the standards for district boundaries, the Commission's Comprehensive Land Use Plan, and the purpose, intent, and provisions of Ch. 206-A (the Land Use Regulation Law).
- B. The Concept Plan and the associated P-RP Subdistrict satisfy a demonstrated need in the community or area and have no undue adverse impact on existing uses or resources.
- C. The Concept Plan and the associated P-RP Subdistrict are more appropriate for the protection and management of existing uses and resources within the affected area.
- D. The land use standards contained in the Concept Plan serve the purpose, intent and provisions of Ch. 206-A and are consistent with the Commission's Comprehensive Land Use Plan.
- E. The Concept Plan and the associated P-RP Subdistrict satisfy the Criteria for Review of Ch. 10.23,H.
- F. Specifically:
 - (1) The Concept Plan, taken as a whole, is at least as protective of the natural environment as the subdistricts which it replaces. In the case of concept plans, this means that any development gained through any waiver of the adjacency criterion is matched by comparable conservation measures.
 - (2) The Concept Plan includes in its purpose the protection of those resources in need of protection.
 - (3) The Concept Plan strikes a reasonable and publicly beneficial balance between appropriate development and long-term conservation of lake resources.
 - (4) The Concept Plan's conservation measures apply in perpetuity.
- G. The Commission has fully considered the standards set forth in Ch. 10.25,A (Review Standards for Structures Adjacent to Lakes) of the Commission's rules in reaching its conclusions regarding the criteria for adoption or amendment of land use district boundaries.

Therefore, the Commission approves the petition of Plum Creek Maine Timberlands, L.L.C. and Plum Creek Land Company to rezone 380,074 acres to a Resource Plan Protection (P-RP) Subdistrict per the maps attached hereto as Appendix A of Attachment B, and make effective the attendant *Concept Plan for the Moosehead Lake Region*.

In accordance with 5 M.R.S.A. section 11002 and Maine Rules of Civil Procedure 80C, this decision by the Commission may be appealed to Superior Court within 30 days after receipt of notice of the decision by a party to this proceeding, or within 40 days from the date of the decision by any other aggrieved person.

DONE AND DATED AT BANGOR, MAINE THIS 23RD DAY OF SEPTEMBER, 2009.

By: _____

Catherine M. Carroll, Director

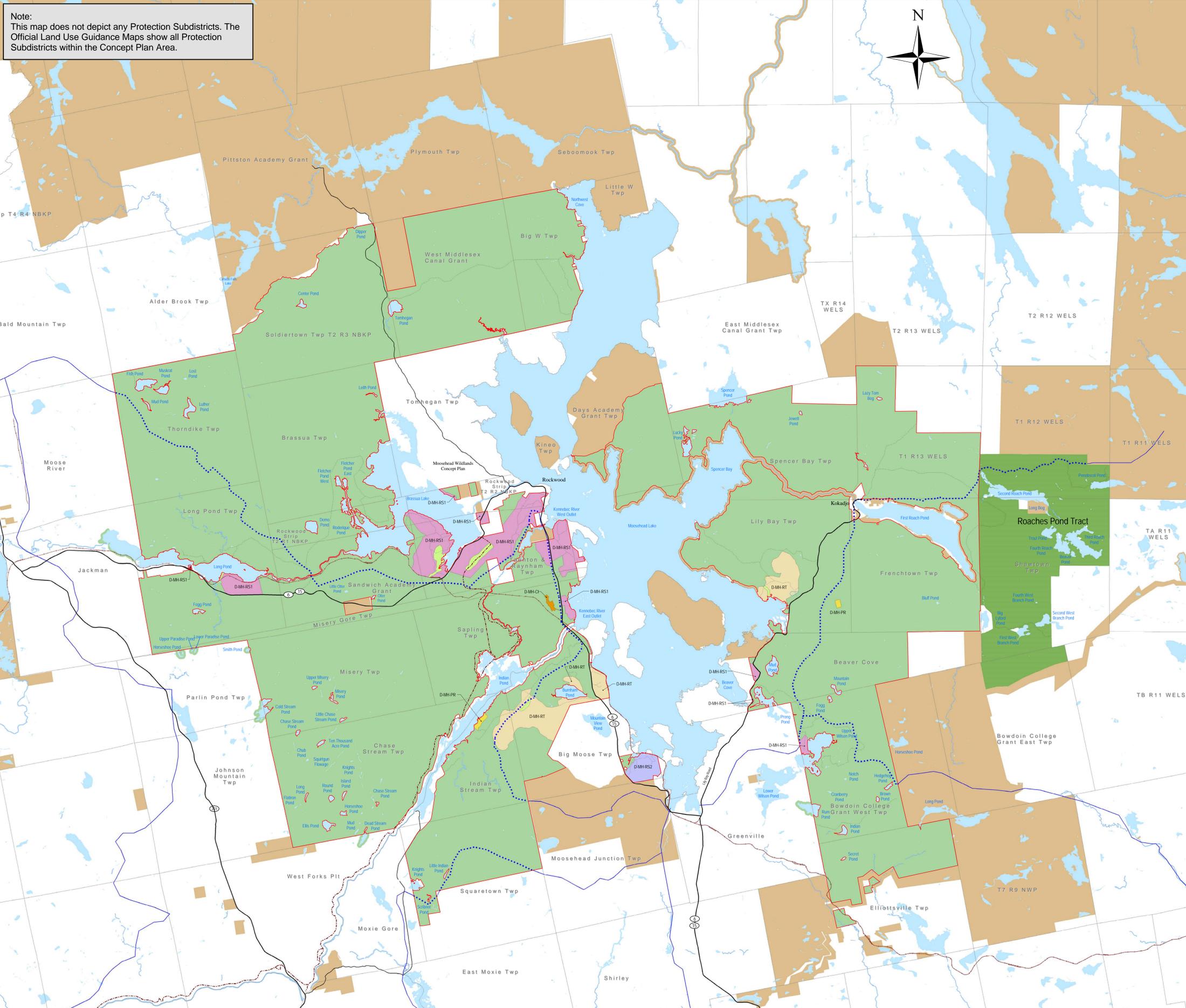
This change in subdistrict designation is effective on October 8, 2009.

Attachments

- A: Summary Map of the Concept Plan and the Resource Plan Protection (P-RP) Subdistrict
- B: Concept Plan for the Moosehead Lake Region
(Adopted September 23, 2009, Effective October 8, 2009)

Concept Plan Summary

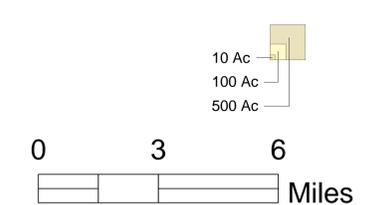
CONCEPT PLAN for PLUM CREEK'S LANDS in the MOOSEHEAD LAKE REGION



Note:
This map does not depict any Protection Subdistricts. The Official Land Use Guidance Maps show all Protection Subdistricts within the Concept Plan Area.

Legend

- Resource Plan Protection (P-RP) Subdistrict
- Private, State, Federal Land in Conservation
- Moosehead Region Conservation Easement
- Roaches Pond Tract
- No Disturbance Area
- Residential Development Zone (D-MH-RS1)
- Residential/Resort Optional Zone (D-MH-RS2)
- Primitive Resort Development Zone (D-MH-PR)
- Resort Development Zone (D-MH-RT)
- Commercial Industrial Development Zone (D-MH-CI)
- Mapped Sand and Gravel Aquifer
- Major Road (Public)
- Minor Road (Public or Private)
- Approximate Moosehead-to-Mahosuc's Trail
- ITS Snowmobile Trail
- Existing Public ITS Snowmobile Trail
- Railroad



Attachment B:
Concept Plan for the Moosehead Lake Region

Note: Attachment B will be made available for viewing on the Commission's web site prior to the September 23, 2009 Commission meeting.